BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF OHIO

Petition of Global NAPs Ohio, Inc. for	**)**	
Arbitration Pursuant to Section 252 of the	**)**	
Telecommunications Act of 1996 to Establish	**)**	**Case No. 02-876-TP-ARB**
an Interconnection Agreement	**)**	
with Verizon North Inc. f/k/a GTE North	**)**	
Incorporated	**)**	

RESPONSE OF VERIZON NORTH INC. TO THE PETITION FOR ARBITRATION OF GLOBAL NAPs OHIO, INC.

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I. INTRODUCTION

Global NAPs Ohio, Inc. ("GNAPs") Petition for Arbitration of an Interconnection Agreement ("GNAPs' Petition") is deficient. GNAPs fails to identify all the unresolved issues or the "position of the parties with respect to these issues," as required by § 252(b)(2) of the Telecommunications Act of 1996 ("Act"). Moreover, GNAPs' Petition continues to mischaracterize the nature of the issues in dispute. GNAPs and its affiliates have been thoroughly informed of the positions of Verizon Ohio Inc. ("Verizon") and its affiliates regarding the disputed contract language in ongoing negotiations and arbitrations in many other states involving the same disputed contract.

Rather than step up to its burden as a Petitioner pursuant to § 252(b)(1) of the Act, GNAPs merely recycles the same Petition its affiliates filed against Verizon affiliates several months ago in five other states.[1] In all of those states, Verizon affiliates have filed responsive pleadings that address the position of Verizon and its affiliates on all the disputed contract provisions. In two of those states, Verizon and GNAPs affiliates have exchanged testimony and participated in arbitration hearings aimed at resolving the same disputed contract language at issue in Ohio. As a result, GNAPs is well aware of all the disputed contract language and Verizon's position on that language. Yet GNAPs persists in shirking its duty under § 252(b)(2) of the Act. Although GNAPs articulates only nine narrow issues for arbitration, attached to its Petition is a redlined contract draft reflecting significant disputed contract language unrelated to the nine identified issues. GNAPs admits that "there are outstanding negotiation issues between the Parties"[2] and that it "has not necessarily identif[ied] all of the provisions in the

[1] GNAPs filed Petitions for Arbitration in California and Florida on December 20, 2001 and in New York, Pennsylvania, and Virginia on January 4, 2002.

[2] GNAPs' Petition at 5, ¶ 15.

attached 'redline' draft of the Template Agreement"[3] that are disputed. For the issues GNAPs identified, it persists in mis-stating the real issue in dispute or Verizon's position.

Despite undefined issues and unsupported contract language, GNAPs asks the Public Utilities Commission of Ohio (the "Commission") to (i) "find that the GNAPs' proposed modifications to Verizon's Template Agreement are reasonable and consistent with the law" and (ii) "approve its revisions to Verizon's Template Agreement."[4] GNAPs has not provided an adequate basis for the Commission to grant the relief it seeks. In addition, GNAPs' proposed changes are contrary to its representations during the negotiations, in which GNAPs agreed to accept the Verizon Template Agreement as is, except for changes to which the Parties had previously agreed.[5] The Commission, therefore, should reject GNAPs' unsupported request based on its representations during the negotiations and on the deficiency of GNAPs' Petition and accompanying exhibits.

If the Commission nonetheless considers GNAPs' proposed contract changes, despite its failure to properly raise or support them, the Commission should reject these changes on their merits. Virtually all these changes amount to corporate welfare: GNAPs is demanding that Verizon subsidize GNAPs' cost of doing business. An Arbitration Panel of this Commission has recognized and rejected GNAPs' same demand in the context of GNAPs' recent arbitration with Sprint and Ameritech (*"GNAPs Consolidated Arbitration")*.[6] Moreover, as further explained in this Response submitted pursuant to

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[3] *Id*.

[4] GNAPs' Petition at 31, ¶ 75.

[5] *See* November 2, 2001, correspondence from John Dodge, Jim Scheltema, and Laura Schloss of GNAPs to Joseph Greenwood and Gregory Romano of Verizon, attached at Ex. B to this Response.

[6] *See In the Matter of the Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with United Telephone Company of Ohio d/b/a Sprint,* Case No. 01-2811-TP-ARB and *In the Matter of the Petition of Global NAPs, Inc. for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with*

(continued . . .)

Section 252(b) of the Act,[7] GNAPs' proposals conflict with or impermissibly expand upon the duties of interconnecting carriers as set forth in the Act. By contrast, the interconnection agreement proposed by Verizon is both consistent with the Act and a fair and practical resolution of the Parties' rights and obligations.

II. SUPPORTING EXHIBITS

Verizon's proposed interconnection agreement is attached as Exhibit A. It reflects the language upon which Verizon and GNAPs agree. Where Verizon and GNAPs disagree, GNAPs' proposed language is shown as struck through and Verizon's as bold and double underlined. In addition to Verizon's proposed interconnection agreement, attached as Exhibit B are additional documents relating to the Parties' negotiations discussed below.

III. NEGOTIATIONS

GNAPs presents an outdated, incomplete, and thereby misleading view of the Parties' negotiations. For Ohio, GNAPs did not request that negotiations commence until September 28, 2001.[8] The negotiations history that GNAPs discusses in its Petition, however, primarily predates the Ohio-specific statutory negotiations period, with GNAPs entirely omitting the most recent several months leading up to GNAPs' April 10, 2002 Petition for Arbitration.

GNAPs correctly cites January 19, 2001 as the date of its initial request for negotiations in states other than Ohio. Although the statutory negotiations' period in Ohio commenced in late

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Ameritech Ohio, Case No. 01-3096-TP-ARB, Arbitration Panel Report (March 28, 2002). It is Verizon's understanding that the Commission will issue its order on or about May 9, 2002.

[7] 47 U.S.C. § 151 *et seq.*

[8] *See* September 28, 2001 correspondence from John Dodge, counsel for GNAPs, to Renee Ragsdale of Verizon, Ex. B. GNAPs originally requested that negotiations commence on September 28,

(continued . . .)

September, 2001, GNAPs suggests that it was somehow aggrieved by an alleged failure of Verizon to timely provide its Template Agreement. In addition to being outdated, GNAPs' assertion is incorrect. Verizon sent GNAPs an electronic version of Verizon's model interconnection agreement on February 2, 2001, and not April 23, 2001 as GNAPs claims, so that the parties could use it as a basis for their multi-state negotiations.

For seven months, Verizon received only limited changes to its proposed interconnection agreement from GNAPs. During this period, GNAPs repeatedly changed negotiators. Although GNAPs' attorney, Christopher Savage was the first point of contact with GNAPs, on February 23, 2001, GNAPs notified Verizon that Erik Cecil would be the primary negotiating attorney for GNAPs.[9] But on March 15, 2001, it was another GNAPs attorney, Gerie Miller, who forwarded discrete changes to the Verizon model interconnection agreement. Yet again, in June, GNAPs introduced new negotiators, Jim Scheltema, John Dodge, and Laura Schloss.

Apparently to accommodate its changing negotiators, GNAPs sought an extension of the negotiations period in June, agreeing that Verizon should send its most recent template agreement and repeatedly promising few changes.[10] Accordingly, Verizon provided its then-current template to GNAPs on June 29, 2001. But, after obtaining Verizon's agreement to an extension of time for negotiations based on GNAPs' representation that it expected to provide only minor edits, on September 10, 2001, GNAPs provided extensive proposed changes to nearly every provision of the

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2001 but the Parties have since agreed to extend that date. *See* March 5, 2002, correspondence from Joseph J. Greenwood of Verizon to James Scheltema of GNAPs, Ex. B.

[9] *See* February 23, 2001, correspondence from Erik Cecil to Joseph Greenwood, Ex. B.

agreement. GNAPs' only explanation was that it wanted to go another way. Despite the fact that GNAPs took seven months to evaluate and respond to Verizon's proposed agreement, GNAPs now implies that Verizon should have more quickly evaluated and responded to the extensive redlined draft GNAPs provided on September 10,[11] which also predated the first day of the statutory Ohio-specific time period that commenced on September 28.

Contrary to GNAPs' representation that it was "six weeks" from September 10 before "Verizon indicated its availability for negotiations,"[12] the Parties discussed a negotiating schedule on September 27, 2001, still before the statutory time period applicable to Ohio commenced. Ultimately, Verizon and GNAPs agreed to a negotiation and arbitration schedule to allow the parties to manage and coordinate their state arbitration schedules. Pursuant to GNAPs' original request for negotiations, GNAPs had until March 7, 2002 to seek arbitration in Ohio. Two days before GNAPs' Ohio Petition was due, on March 5, 2002, the Parties agreed to extend the request-for-negotiation date to November 1, 2001.[13]

From October through December, the parties conducted negotiation sessions through weekly conference calls.[14] Multiple calls were held during the weeks preceding the December 20 arbitration deadline for California and Florida. During that period, GNAPs agreed to negotiate from another

[10] *See* June 26, 2001, correspondence from Karlyn Stanley, Erik Cecil, and Gerie Miller of GNAPs to Joseph Greenwood of Verizon, Ex. B; July 11, 2001, correspondence from Joseph Greenwood to GNAPs, Ex. B.

[11] *See* GNAPs' Petition at 6-8, ¶¶ 16-22.

[12] *Id.* at 7, ¶ 19.

[13] *See* March 5, 2002 correspondence from Joseph J. Greenwood of Verizon to Mr. James Scheltema of GNAPs, Ex. B.

[14] GNAPs correctly notes that a November 30th session was cancelled in advance due to a "familial obligation" of one of Verizon's negotiators, the birth of the negotiator's child.

update of Verizon's model interconnection agreement, which incorporated the FCC's *ISP Remand Order*[15] and included state-specific language for the parties to consider. Although GNAPs correctly notes that Verizon did not provide a redlined draft, GNAPs fails to note that Verizon did explain the "updates" and that GNAPs declined Verizon's offer of a redline. In any event, GNAPs had Verizon's proposed agreements in electronic form and could have easily produced a redlined version itself.

As the negotiations continued, GNAPs again reassessed its approach, informing Verizon on November 2 that it proposed "to narrow the focus of our discussions to issues that are of the most import to the company's business plan, and accept (with the heretofore agreed changes) the remainder of the Verizon template as is."[16] At that time, GNAPs provided Verizon with a list of "issues" rather than a redline.[17] As the parties approached the deadline for requesting arbitration in California and Florida, the parties were still discussing what GNAPs called "general principles," rather than contract language.[18] GNAPs did not provide Verizon its proposed contract language until it filed its Petitions in California and Florida on December 20, 2001.

From Late December through GNAPs' April 10 Ohio Petition, the parties have concurrently conducted ongoing negotiations while proceeding with state-specific arbitrations. During this time period, the parties were able to reach agreement on additional contract language, including dark fiber

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[15] *In the Matter of the Local Competition Provisions in the Telecommunication Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*"). On May 3, 2002, the United States Court of Appeals for the District of Columbia remanded, but expressly did not vacate, the *ISP Remand Order* back to the FCC. *WorldCom, Inc. v. Federal Communications Comm'n*, Case No. 01-1218 (D.C. Cir. May 3, 2002).

[16] *See* November 2, 2001, correspondence from John Dodge, Jim Scheltema, and Laura Schloss of GNAPs to Joseph Greenwood and Gregory Romano of Verizon, Ex. B.

[17] *See id*.

[18] *See* December 10, 2001, correspondence from John Dodge and Jim Scheltema of GNAPs to Joseph Greenwood and Gregory Romano of Verizon, Ex. B.

and performance measures and remedies. On April 4, 2002, Verizon contacted GNAPs, offering to discuss the open items that remained between the Parties. Subsequently, on April 9, 2002, Verizon and GNAPs discussed several open items including the insurance, audit, reference to tariffs, and two-way trunk issues, although the parties were unable to reach further agreement at that time.

IV. SUMMARY OF RECOMMENDATIONS

The first five issues are the same as those the Arbitration Panel considered in the recent *GNAPs Consolidated Arbitration*.[19] Verizon's proposals are generally consistent with the Commission's resolution of those overlapping issues. As the Arbitration Panel did in the *GNAPs Consolidated Arbitration*, the Commission should reject GNAPs' similar attempts to use its interconnection agreement with Verizon to escape financial responsibility for its network decisions and avoid existing intercarrier compensation regimes.

As discussed, there also are numerous provisions of the GNAPs/Verizon interconnection agreement still unresolved. In a cursory attempt to correct the inadequacy of its Petition in raising issues to resolve the still disputed language, GNAPs merely includes references to various sections of the proposed interconnection agreement containing disputed language at the end of each issue enumerated. Many of these referenced sections are unrelated to the GNAPs' issue in which they are cited. Accordingly, GNAPs' rationale on the issue it articulates provides the Commission with no basis to adopt the unrelated contract language to which GNAPs refers at the end of the section.

The chart below summarizes Verizon's position on each of the issues GNAPs raised, noting which contract sections are related to the issue and which ones are not related despite GNAPs' cursory

[19] *See GNAPs Consolidated Arbitration* at 2.

citation to these sections at the end of its discussion on each issue. The Commission should resolve each of the issues in Verizon's favor and adopt Verizon's proposed contract language as summarized below:

Issue No.	Related / Unrelated	Contract Sections	Summary of Rationale
1, 2	Related	Glossary §§ 2.45, 2.66; Interconnection Attachment §§ 2.1, 7.1	Verizon's proposal permits GNAPs to physically interconnect with Verizon at only one point on Verizon's existing network while equitably allocating the costs associated with GNAPs' network design decisions.
	Unrelated	Interconnection Attachment §§ 2.3, 2.4, 3, 5.2.2, 5.3	GNAPs' proposed changes to these sections are unrelated to the issues it articulated for arbitration. Verizon's language incorporates essential engineering design requirements and a reasonable process to implement alternative interconnection arrangements.
3	Related	Glossary §§ 2.34, 2.47, 2.56, 2.75, 2.83, 2.91; Interconnection Attachment §§ 6.2, 7.3.4	Verizon's proposal permits GNAPs to define its local calling areas for retail customers without impermissibly altering current law and policy governing intercarrier compensation.
	Unrelated	Glossary § 2.77; Interconnection Attachment §§ 2, 7.1, 13.3	GNAPs' proposed changes to these sections are unrelated to the issues it articulated for arbitration. Verizon's language ensures that the parties can define their local calling areas as they see fit for retail purposes but recognizes that neither party can alter the current law governing intercarrier compensation.
4	Related	Glossary §§ 2.34, 2.47, 2.56, 2.75, 2.83, 2.91; Interconnection Attachment § 6.2	Verizon's proposal ensures that GNAPs does not impermissibly alter current law and policy regarding intercarrier compensation through mis-assignment of NXX codes.
	Unrelated	Glossary §§ 2.71-2.73, 2.77; Interconnection Attachment §§ 9.2.1, 13.3	GNAPs' proposed changes to these sections are unrelated to the issues it articulated for arbitration. Verizon's language ensures that the rating and routing of traffic between the parties is consistent with current law.
5	Related	Glossary § 2.75	Verizon's proposal eliminates a duplicative "applicable law" provision for the treatment of ISP traffic.

Issue No.	Related / Unrelated	Contract Sections	Summary of Rationale
	Unrelated	Glossary §§ 2.42, 2.56, 2.74; Additional Services Attachment § 5.1; Interconnection Attachment §§ 6, 7.2, 7.3, 7.4	GNAPs' proposed changes to these sections are unrelated to the issues it articulated for arbitration. Verizon's language properly reflects the reciprocal compensation requirements for ISP-bound traffic consistent with the FCC's *ISP Remand Order*.
6	Resolved	UNE § 8.	In other states, GNAPs' Issue 6 related to the parties' dark fiber dispute. The parties, however, resolved the disputed language associated with dark fiber in UNE § 8. GNAPs correctly omitted this issue from its Ohio Petition, but appears not to have re-numbered the remaining issues.
7	Related	Interconnection Attachment §§ 2.2.3, 2.2.4, 2.4.1 - 2.4.3, 2.4.10	Verizon's proposal preserves GNAPs' option to use two way-trunks, but provides necessary and reasonable detail to ensure mutual consultation and agreement.
	Unrelated	Glossary §§ 2.93 - 2.95, Interconnection Attachment §§ 2.2.1, 2.2.5, 2.3, 2.4.4, 2.4.8, 2.4.9, 2.4.11, 2.4.12, 2.4.13, 2.4.14, 2.4.16	GNAPs' proposed changes to these sections are unrelated to the issues it articulated for arbitration. Verizon's language incorporates reasonable requirements for interconnection of the parties' respective networks.
8		General Terms and Conditions §§ 1, 4.7, 6.5, 6.9, 41.1, 47; Glossary § 2.73; Additional Services § 9; Interconnection Attachment §§ 1, 2.1.3.3, 2.1.4, 2.1.6, 2.3, 2.4.1, 8, 9.2.2, 10.1, 10.6, 16.2; Resale §§ 1, 2.1, 2.2.4; Unbundled Network Elements §§ 1.1, 1.4.1, 1.8, 4.3, 4.7.2, 6.1, 6.1.4, 6.1.11, 6.2.1, 6.2.6, 12.11; Collocation § 1, Pricing Attachment §§ 1.5, 2.2.2	Verizon's references to tariffs establishes that effective tariffs are the first source for applicable prices while ensuring that the interconnection agreement's terms and conditions take precedence over conflicting tariffed terms and conditions. Verizon's references to tariffs are reliable and the tariff process that this Commission oversees is not unilateral.

Issue No.	Related / Unrelated	Contract Sections	Summary of Rationale
9	Resolved	General Terms and Conditions § 31.	In other states, GNAPs' Issue 9 related to the parties' performance measures dispute. The parties, however, resolved the disputed language associated with performance measures in General Terms and Conditions § 31. GNAPs correctly omitted this issue from its Ohio Petition, but appears not to have re-numbered the remaining issues.
10		General Terms and Conditions § 21	Verizon's insurance requirements reasonably protect its network, personnel, and other assets in the event GNAPs has insufficient resources.
11		General Terms and Conditions § 7; Additional Services Attachment § 8.5.4 Interconnection Attachment §§ 6.3, 10.13	Verizon's audit provisions are reasonable because they apply equally to both parties and would be conducted by a third party for a limited purpose.
Supp. Issue 12		Interconnection Attachment § 2.1.5	Verizon should be permitted to collocate at GNAPs' facilities as a fair and equitable option to interconnect with GNAPs.
Supp. Issue 13		General Terms and Conditions § 4.7	Verizon's proposal gives effect to a change in law, while GNAPs improperly attempts to delay implementation of the law even if the change is not subject to a stay.
Supp. Issue 14		General Terms and Conditions § 42	Verizon's proposal ensures that Verizon will provide interconnection and UNEs consistent with applicable law.

V. INTERCONNECTION ISSUES (ISSUES 1, 2, 7, SUPPLEMENTAL ISSUE 12)

Verizon proposes contract language on the interconnection issues that allows GNAPs the freedom to make its own network design choices. With this freedom, however, comes responsibility for the costs associated with GNAPs' choices. GNAPs must accept responsibility for the costs it causes and should not be able to force Verizon to bear these costs and subsidize GNAPs' network design. These are not costs that Verizon would otherwise incur.

The contract language Verizon proposes on these disputed issues reflects Verizon's position, consistent with applicable law and the Arbitration Panel's recent decision, that (1) GNAPs may interconnect with Verizon's existing network, (2) GNAPs may exercise legitimate choices about how it will interconnect, (3) GNAPs' choices necessarily impact Verizon's network, and (4) GNAPs is responsible for the costs caused by how it chooses to interconnect. GNAPs' contract proposals are not always consistent with these principles or with this Commission's precedent. Because Verizon's are, the Commission should adopt Verizon's proposed contract language.

Issue 1: Should Either Party Be Required To Install More Than One Point Of Interconnection Per LATA?[20]

GNAPs' Position: No. Global is not required to install more than one POI per LATA and may establish a single POI per LATA. Global has the right to designate any technically feasible point at which both Parties must deliver traffic to the other Party.

Verizon's Position:

There is not much disagreement between the parties with respect to Issue 1. Verizon recognizes that pursuant to the Act, it has an obligation to provide GNAPs interconnection "at any technically feasible point within" Verizon's network.[21] Its virtual geographically relevant interconnection point proposal ("VGRIP")[22] provides GNAPs with the flexibility to physically interconnect with Verizon's network at only one point in a LATA. GNAPs is well aware from the parties' negotiations and the multiple arbitrations between Verizon and GNAPs affiliates on this issue that Verizon's proposal does not require GNAPs to install more than one point of interconnection per LATA. The parties' real dispute is in connection with Issue 2.

[20] The specific contract language in dispute for Issues 1 and 2 are §§ 2.45 and 2.66 of the Glossary Section and §§ 2.1 and 7.1 of the Interconnection Attachment. GNAPs has redlined other contract provisions in the Interconnection Attachment that raise other discrete concerns. These provisions include §§ 2, 3, 5.2.2, and 5.3 of the Interconnection Attachment. If GNAPs had wanted these sections to be included in its interconnection agreement with Verizon, it should have affirmatively raised these issues with the Commission. As explained more fully below, Verizon has succinctly set out its reasons for why the Commission should approve Verizon's contract language.

[21] *See* 47 U.S.C. § 251(c)(2)(B); *In the Matter of Developing a Unified Intercarrier Compensation Regime*, 16 FCC Rcd 9610 at ¶ 112 (2001) (*"Intercarrier Compensation NPRM"*). As the Commission is aware, the Federal Communications Commission ("FCC") is seeking comments on its "Single Point of Interconnection Issues." *Intercarrier Compensation NPRM* ¶¶ 112-14.

[22] *See* Verizon proposed interconnection agreement, Interconnection Attachment §§ 2.1, 7.1.1 *et seq*.

A. The Commission Should Adopt Verizon's Language Because It Resolves The Issue And Is Unambiguous.

GNAPs' proposed contract language associated with Issue 1 should be rejected because it is (i) unnecessary to resolve the issue GNAPs raises, and (ii) is confusing and ambiguous. For instance, GNAPs' proposed definition of the Point of Interconnection ("POI") refers to the unbundling requirements for the network interface device ("NID").[23] This unbundled network element ("UNE") has nothing to do with the POI or GNAPs' ability to interconnect with Verizon's network at one point in a LATA. GNAPs' proposed language does not settle the dispute and by interjecting the NID into the definition of the physical POI, GNAPs' contract language is confusing.[24]

Other parts of GNAPs' proposed contract are also inconsistent with GNAPs' Petition. GNAPs states that pursuant to "federal law, a CLEC may elect to interconnect with an ILEC at any single, technically feasible point on the ILEC's network."[25] Section 2.1.1 of GNAPs' proposed Interconnection Attachment, however, provides that "GNAPs may designate a single point of interconnection per LATA."[26] This proposal does not confine GNAPs' choice of the POI to any technically feasible point on Verizon's network. To the contrary, Verizon's proposal permits GNAPs to interconnect with Verizon's existing network at only one point in a LATA and should be adopted.

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[23] *See* GNAPs proposed interconnection agreement, Glossary § 2.66. In its entirety, GNAPs' proposed definition for the POI states:

2.66 POI (Point of Interconnection).

Shall have the meaning stated in 47 C.F.R. § 51.319(b).

[24] *See* GNAPs' proposed interconnection agreement, Glossary § 2.66; Interconnection Attachment §§ 2.1, 7.1.1.

[25] GNAPs' Petition ¶ 31.

[26] GNAPs' proposed interconnection agreement, Interconnection Attachment § 2.1.1.

Verizon does not disagree with GNAPs that it may choose to physically interconnect with Verizon at only one point on Verizon's network. Verizon's VGRIP proposal provides GNAPs with the flexibility to do so. But, as discussed in connection with Issue 2, when GNAPs chooses this option, it should not be permitted to force Verizon to bear the cost of that decision.

B. Contract Changes Proposed By GNAPs But Not Discussed In Its Petition.

Not all the contract language for which GNAPs seeks approval in connection with Issue 1 actually relates to Issue 1, or for that matter Issue 2. Specifically, in the section of its Petition addressing Issue 1, GNAPs references the following sections that contain disputed contract language, but for which GNAPs raised no issue, provided no justification for its proposed language, and failed to explain Verizon's position in contravention of its duty as a Petitioner under § 252(b)(2) of the Act: Verizon Interconnection Attachment §§ 2.3, [27] 2.4,[28] 3, 5.2.2, and 5.3. GNAPs' proposed contract language should be rejected because it did not properly raise the issues or provide any rationale for its proposals. The Commission should further reject GNAPs' proposed language, because Verizon's proposals are reasonable and consistent with the law.

Interconnection Attachment §§ 3 *et seq*: This section of the contract deals with alternative interconnection arrangements. GNAPs' edits to this section indicate that it wants the unilateral ability to select how, when, and where to deploy a type of mid-span fiber meet arrangement between the

[27] GNAPs cites to this section in connection with both Issues 1 and 7. It is relevant to neither. With respect to Issue 1, the one-way trunks addressed in § 2.3 do not affect GNAPs' designation of the single point of interconnection. Nevertheless, Verizon discusses § 2.3 in more detail in connection with Issue 7.

[28] GNAPs cites to this section in connection with both Issues 1 and 7. It is relevant to neither. With respect to Issue 1, the two-way trunks addressed in § 2.4 do not affect GNAPs' designation of the single point of interconnection. Nevertheless, Verizon discusses § 2.4 in more detail in connection with Issue 7.

companies, which is described as an end-point fiber meet. GNAPs' proposal would also dictate to Verizon the technical and operational details of the mid-span fiber meet arrangement and would require Verizon to construct new facilities. GNAPs' proposal is unreasonable and at odds with the nature of the mid-span fiber meet arrangement.

Nearly *all* aspects of each mid-span point fiber meet arrangement are negotiated and can vary significantly from installation to installation. Some notable variables requiring joint consideration are: compensation issues, the terminating electronic equipment at each party's end (*e.g.*, their compatibility and upgrade policy); the mid-span fiber meet's transmission capacity; the parties' diversity requirements; the designated point(s) of interconnection between the ILEC's and the new exchange carrier's, or NEC's, network; and the physical environment, suitability and availability of the points of interconnection. Indeed, some of the additions GNAPs inserted into the Verizon agreement would bind the parties to deploy equipment and software that may not generally be utilized by Verizon and may become outdated over the course of this interconnection agreement.

GNAPs' proposal would graft a boilerplate agreement onto an arrangement that must, in practical terms, be reviewed on a case-by-case basis. Verizon will establish mid-span fiber meet arrangements with GNAPs, but because these are specialized arrangements, the parties will need to define the details outside of the interconnection agreement before the mid-span fiber meet work begins. The most reasonable way of doing so is through a memorandum of understanding. After the details are defined through the memorandum of understanding, Verizon can start building the mid-span fiber meet.

Verizon's position is consistent with the FCC's holding that because each carrier derives benefit from the mid-span meet, "each party should bear a reasonable portion of the economic costs of the

arrangement."[29] In addition, because the mid-span meet requires the ILEC to build new fiber optic facilities to the NEC's network, the FCC has determined that the parties should mutually determine the distance of this build-out. GNAPs' proposal permits it to dictate to Verizon how much Verizon would be required to build out and, thus, how much cost Verizon must bear.

GNAPs and Verizon affiliates have successfully executed memoranda of understanding in other jurisdictions to define the technical and operational details of particular mid-span fiber meet arrangements. GNAPs has offered no explanation as to why the parties should deviate from this successful practice. If the Commission should decide to rule on this issue, it should adopt Verizon's proposal and require the parties to reach mutual agreement on fiber meet details, through a memorandum of understanding, prior to deploying a mid-span fiber meet arrangement.

Interconnection Attachment §§ 5.2.2, 5.3: GNAPs makes a number of inappropriate edits to §§ 5.2.2 and 5.3. Again, these edits do not affect GNAPs' ability to designate the POI, so they have nothing to do with the issues presented for arbitration. In § 5.2, GNAPs deleted a section that deals with the ordering of transport facilities. Interconnection trunks ride over transport facilities. With trunking interconnection, the carrier orders interconnection trunks separately from transport facilities. GNAPs' deletions eliminate the description of the ordering (the process described in § 5.2.2 is the one currently used by NECs and IXCs operating in Ohio) of these facilities.

With its edits to § 5.3 (concerning Verizon's switching system hierarchy and trunking requirements), GNAPs has deleted provisions that are necessary for the proper routing of traffic between the parties. GNAPs' edits conflict with the industry standard Local Exchange Routing Guide

[29] *In re Implementation of the Local Competition Provision in the Telecommunications Act of* (continued . . .)

("LERG"), which is used by all carriers -- ILECs, NECs, and IXCs -- as a basis for routing terminating traffic. If the Commission rules on this issue, GNAPs' modifications should be rejected because they leave the contract without necessary detail about how the parties will route and deliver terminating traffic.

1996, First Report and Order, 11 FCC Rcd 15499 ¶ 553 (1996) ("*Local Competition Order*").

Issue 2: Should Each Party Be Responsible For The Costs Associated With Transporting Telecommunications Traffic To The Single POI?

GNAPs' Position: Yes. Each carrier is financially responsible for transporting traffic to the single POI.

Verizon Position:

GNAPs confuses its ability to select the point on Verizon's network at which the parties will physically exchange traffic with the ability to force Verizon to bear the additional incremental costs associated with that decision. Verizon recognizes that the physical exchange of traffic that is subject to reciprocal compensation under § 251(b)(5) of the Act may occur at one point in a LATA. GNAPs, however, should not be permitted to force Verizon to assume all the financial obligations associated with the increased transport for traffic resulting from GNAPs' decision to use only one physical point of interconnection contrary to prior decisions of this Commission, the FCC's *Local Competition Order*, and recent federal court decisions. The Commission should adopt Verizon's proposed contract language because it more equitably deals with the allocation of the costs caused by GNAPs' network design decisions and is consistent with the Arbitration Panel's resolution of this same issue in the recent *GNAPs Consolidated Arbitration*.[30]

A. If GNAPs Decides To Use One Physical Point Of Interconnection With Verizon's Network, VGRIP Equitably Allocates The Additional Incremental Costs.

This is an issue between the parties because GNAPs wants (i) to physically interconnect with Verizon at one point in a LATA, and (ii) would like Verizon to be financially responsible for costs of the facilities that are used to transport Verizon-originated traffic to that single POI. To ensure that Verizon

[30] *See GNAPs Consolidated Arbitration* at 2.

does not bear all the additional incremental costs resulting from GNAPs', or any other NECs', decision to establish only one physical POI in a LATA, Verizon has developed its virtual geographically relevant interconnection point proposal, or VGRIP proposal. Pursuant to VGRIP, Verizon differentiates between that physical POI -- where the carriers physically exchange traffic -- and a point on the network where financial responsibility for the call changes hands. Verizon refers to this demarcation of financial responsibility as the "Interconnection Point" or "IP."[31]

Under Verizon's VGRIP proposal, the location of the IP may be one at which GNAPs has a collocation arrangement or if GNAPs does not have a collocation arrangement, Verizon refers to the financial demarcation point as a "virtual IP." The financial demarcation, or "IP," may be at several different locations. A typical example involves designation of a GNAPs' collocation arrangement at a Verizon tandem wire center in a multi-tandem LATA as the financial demarcation point.[32] In this example, the IP may be outside the originating calling area, in which case Verizon would absorb some of the additional costs for transporting the call to the tandem. In this respect, Verizon's VGRIP proposal represents a significant compromise for both parties because Verizon and GNAPs would both bear a portion of the additional incremental costs of transport beyond the local calling area.

Once Verizon delivers traffic to GNAPs' financial demarcation point (the IP), Verizon proposes to make GNAPs financially responsible for delivery of this traffic to its switch. By assuming financial responsibility at the IP, GNAPs may (i) purchase transport from Verizon, (ii) self-provision the transport to its switch, or (iii) purchase transport from a third-party. For example, to deliver this traffic from

[31] Verizon proposed interconnection agreement, Glossary § 2.45.

[32] *See* Verizon proposed interconnection agreement, Interconnection Attachment § 7.1.1.

GNAPs' collocation arrangement at the Verizon tandem wire center back to its switch, GNAPs could purchase transport from Verizon pursuant to the provisions of the interconnection agreement (*e.g.*, unbundled network element interoffice facilities, or "UNE IOF").

Under another VGRIP option,[33] if GNAPs chooses not to establish an IP at the Verizon tandem or at the Verizon end office at which GNAPs collocates, the financial demarcation point -- in this case a "virtual IP" -- would be at the end office serving the Verizon customer who places the call. For example, assume a Verizon customer originates a call to GNAPs' customer with a NPA-NXX that is associated with the same local calling area as the Verizon customer. Further assume that GNAPs chooses not to collocate at the Verizon end office or tandem. Nevertheless, pursuant to Verizon's proposed § 7.1.1.1, Verizon will then transport this traffic from the Verizon customer to the POI, wherever it may be located in the LATA. Because Verizon must incur additional transport obligations from GNAPs' interconnection choice, however, Verizon should recover from GNAPs the costs for transporting this traffic from the "virtual IP" -- the Verizon end office -- to the physical POI.[34]

In either of these scenarios, GNAPs (i) retains the right to locate its physical POI at any technically feasible point on Verizon's network in the LATA, (ii) has a choice about where the IP is located, and (iii) bears only a portion of the additional costs it causes as a result of its interconnection decision. Note that VGRIP does not require GNAPs to significantly build out its network or forces GNAPs' network to mirror Verizon's. In short, VGRIP is a very fair proposal to address the consequences of GNAPs' interconnection choices.

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[33] *See* Verizon proposed interconnection agreement, Interconnection Attachment § 7.1.1.1.

[34] These costs may include transport that Verizon may purchase from GNAPs or a third party transport provider, like Ameritech.

B. Verizon's VGRIP Proposal Is Consistent With The Guidelines And Orders Of This Commission And The FCC.

This Commission has expressed its concern that parties who interconnect with one another do so in an equitable manner. In the Commission's *Local Service Guidelines*,[35] Guideline IV.A.3 provides:

> LECs shall be entitled to compensation for the use of network facilities they own or obtain by leasing from another underlying facilities-based LEC (*i.e.*, through purchasing unbundled network elements) to provide transport and terminate traffic originated on the network facilities of other telecommunications carriers.

It is evident that the Commission expects interconnecting parties to fairly compensate one another for the facilities that are used to ***deliver*** a call. Verizon's proposal is consistent with the Commission's *Local Service Guidelines*. GNAPs' proposal, however, is not.

Recently, an Arbitration Panel of this Commission had occasion to address the exact same issues that GNAPs presents in this arbitration proceeding.[36] In the *GNAPs Consolidated Arbitration*, arising from an arbitration with Ameritech and Sprint, the Arbitration Panel relied upon this Guideline when it found in favor of Ameritech and Sprint on the exact same issue that GNAPs has raised in this proceeding with Verizon.[37] The Arbitration Panel recommended that the "Commission determine that Ameritech and Sprint can rightfully charge GNAPs to transport calls originating in local calling areas where GNAPs has no POI to a different local calling area containing GNAPs' POI."[38] In the present proceeding with Verizon, GNAPs argues that Verizon "should be financially responsible for getting its

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[35] Case No. 95-845-TP-COI, Appendix A (February 20, 1997).

[36] *See GNAPs Consolidated Arbitration* at 2.

[37] *Id*. at 6.

[38] *Id*. at 8.

customers' traffic to the single POI."[39] In essence, GNAPs wants Verizon to transport traffic to a distant, lone POI in a different local calling area for free. The Arbitration Panel rejected GNAPs' claim that ILECs are required to transport traffic to GNAPs' POI in a different local calling area for free.[40] GNAPs attempts to make the same argument here and it should likewise be rejected.

In a consolidated arbitration in California against Pacific Bell and Verizon, GNAPs raised the same issues for arbitration with the California Commission against Verizon that it raises before this Commission. Administrative Law Judge Karen Jones issued a Draft Arbitrator's Report ("DAR") in that proceeding.[41] With regard to this issue, the DAR adopted Verizon's VGRIP proposal. The DAR concluded that "carriers should be compensated for the use of their networks, and [the Commission] will require that GNAPs pay transport and tandem switching, if applicable, at TELRIC prices for carrying traffic across [Verizon's] network to GNAPs' single POI."[42] Although it is a preliminary decision, the *California DAR* is consistent with the *GNAPs Consolidated Arbitration* that rejected the same arguments GNAPs raises in its Ohio Petition.

In addition, Verizon's proposal is consistent with the FCC's *Local Competition Order*. In the *Local Competition Order*, the FCC held that:

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[39] GNAPs' Petition ¶ 35.

[40] *GNAPs Consolidated Arbitration* at 9.

[41] *In the Matter of Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Verizon California Inc. f/k/a GTE California Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, App. No. 01-12-026, Draft Arbitrator's Report (April 8, 2002) ("*California DAR*"). ALJ Jones will issue a Final Arbitrator's Report on May 15, 2002, which will be submitted to the full California Commission for its approval.

[42] *Id.* at 25.

> [B]ecause competing carriers must usually compensate incumbent LECs for the additional costs incurred by providing interconnection, competitors have an incentive to make economically efficient decisions about ***where*** to interconnect.[43]

Additionally, the FCC determined that a NEC that "wishes a 'technically feasible' but expensive interconnection would, pursuant to section 252(d)(1), be required to bear the cost of that interconnection, including a reasonable profit."[44] When read together, ¶¶ 199 and 209 provide that a NEC will make efficient decisions about where to interconnect with an ILEC because the NEC is responsible for the costs of that interconnection. By allocating the incremental interconnection costs, VGRIP strikes the right balance between the NEC's ability to interconnect at one point and the NEC's duty to "compensate incumbent LECs for the additional costs incurred by providing interconnection."[45]

The Third Circuit recognized this point in *MCI Telecommunications Corp. v. Bell Atlantic Pennsylvania*.[46] The Third Circuit stated:

> To the extent . . . that WorldCom's decision on interconnection points may prove more expensive to Verizon, the PUC [Pennsylvania Public Utilities Commission] should consider shifting costs to WorldCom. *See* 11 F.C.C.R. 15499 ¶ 209.[47]

Verizon's VGRIP proposal only seeks to recover its additional incremental costs when it transports traffic outside of the local calling area from where the call originated as a result of GNAPs' decision.

This Commission and the Third Circuit, as well as other state commissions,[48] have recognized that a NEC's choice of one POI per LATA imposes additional transport costs on an ILEC. In this

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[43] *Local Competition Order* at ¶ 209.

[44] *Id*. at ¶ 199.

[45] *Id*. at ¶ 209.

[46] 271 F. 3d 491 (3d Cir. 2001); *see also U.S. West Communications, Inc. v. AT&T Communications, Inc.*, 31 F. Supp. 2d 839, 853 n.8 (D. Or. 1998).

[47] *MCI Telecommunications Corp*., 271 F. 3d at 518. In GNAPs' Petition, at ¶ 32, GNAPs quotes from this decision but failed to include the sentence that Verizon quotes above.

proceeding, Verizon's VGRIP proposal allows GNAPs to identify an IP at the tandem or, when applicable, identifies one IP in a local calling area. Nonetheless, if GNAPs chooses to interconnect at only one POI per LATA and designs its network to utilize fewer switches and more transport, Verizon should not be required to shoulder the additional costs caused by GNAPs' interconnection and network design. VGRIP strikes the right balance between locating one POI in a LATA and the additional costs borne by Verizon as a result of that choice.

[48] *See California DAR; In the Matter of Arbitration of Interconnection Agreement Between AT&T Communications of the Southern States, Inc., and TCG of the Carolinas, Inc., and BellSouth Telecommunications, Inc., Pursuant to the Telecommunications Act of 1996*, Docket Nos. P-140, Sub 73, P-646, Sub 7 at 7-15, North Carolina Public Utilities Commission (March 9, 2001); *Petition of AT&T Communications of Southern States, Inc., for Arbitration of Certain Terms and Conditions of a Proposed Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to 47 U.S.C. Section 252*, Docket No. 2000-527-C, Order on Arbitration, Order No. 2001-079, South Carolina Public Service Commission, at 19-28 (January 30, 2001).

Issue 7: Should Two-Way Trunking Be Available To GNAPs At GNAPs Request?[49]

GNAPs' Position: Two-way trunking should be available to GNAPs at GNAPs' request.

Verizon Position:

GNAPs claims that upon the Commission's resolution of this open "policy" issue, -- whether GNAPs should have the unilateral ability to dictate the use of two-way trunks -- the parties can merely insert the contract provisions GNAPs alleges are at issue. The modifications GNAPs submitted to Verizon's Interconnection Attachment, however, present a number of other contract proposals that remain unexplained in GNAPs' Petition. Accordingly, Verizon addresses Issue 7, as articulated by GNAPs, and then separately addresses other problems GNAPs' modifications present.

A. Issue 7: Two-Way Trunks.

The main disagreement between the parties is whether the parties need to mutually agree on the terms and conditions relating to two-way trunking or whether, as GNAPs seems to maintain, GNAPs can dictate those terms. Verizon agrees that, pursuant to 47 C.F.R. § 51.305(f), GNAPs has the option to decide whether it wants to use one-way or two-way trunks for interconnection. But, the parties must come to an understanding about the operational and engineering aspects of the two-way trunks between them. Because two-way trunks present operational issues for Verizon's own network, it is imperative that Verizon have some say as to how this impact is assessed and handled. Verizon's proposal does not "mandate" that two-way trunks will be installed only upon mutual agreement. Instead, Verizon's contract language in § 2.2.3, 2.2.4, and 2.4 identifies operational areas the parties must address to achieve a workable interconnection arrangement.

[49] Verizon proposed interconnection agreement, Interconnection Attachment, §§ 2.2.3, 2.4.

For instance, in § 2.4.2, GNAPs deleted the requirement that both parties agree on the initial number of two-way trunks that the parties will use. Instead, GNAPs' edits would permit it to dictate to Verizon how many interconnection trunks will be deployed between the parties. Because two-way trunks carry both Verizon's and GNAPs' traffic on the same trunk group, this affects network performance and operation on each party's network. Thus, it is reasonable that GNAPs and Verizon should mutually agree on this initial arrangement. In Ohio, Verizon has reached similar agreements with a number of other NECs with whom Verizon interconnects.

Many of GNAPs' edits to the relevant two-way trunking language are also nonsensical. For example, in Verizon's proposed § 2.2.4, GNAPs added the phrase "originating party" to § 2.2.4(b). As in GNAPs' edits to Verizon's proposed § 2.4.11, this addition makes no sense. When the parties use two-way trunk groups, both GNAPs and Verizon "originate" and "terminate" traffic because both parties send traffic over two-way trunks. Thus, by inserting "originating party" it does not describe the parties with any specificity. Because GNAPs' proposals (i) ignore essential operational realities and (ii) are nonsensical, the Commission should reject GNAPs' provisions and adopt Verizon's terms for two-way trunks.

B. Contract Changes Proposed By GNAPs But Not Discussed In GNAPs' Petition.

As with Issues 1 and 2 above, GNAPs submitted extensive contract changes to Verizon's interconnection attachment that raise other discrete matters over which the parties disagree. These matters cannot be resolved by merely resolving the open "policy" issue articulated by GNAPs in Issue 7. The Commission should reject GNAPs' proposed contract language because (i) GNAPs raised no issue, provided no justification for its proposed language, and failed to explain Verizon's position in

contravention of its duty as a Petitioner under § 252(b)(2) of the Act, and (ii) Verizon's proposals are reasonable and consistent with the law.

Glossary §§ 2.93 and 2.94 – Traffic Factors 1 and Traffic Factor 2: GNAPs lists §§ 2.93 and 2.94 of Verizon's Glossary Section as disputed contract language under Issue 7. These definitions have nothing to do with the deployment of two-way trunks but, instead, are related to the intercarrier compensation regime outlined by the FCC in the *ISP Remand Order*.

GNAPs appears to use Verizon's proposed term "Traffic Factor 1" to quarrel with the *ISP Remand Order*. For example, each of GNAPs' changes to these definitions appears to remove any concession that Measured Internet Traffic is interstate in nature (*e.g.*, deleting the exclusion of Measured Internet Traffic from a calculation based on "interstate traffic" in the definition of Traffic Factor 1). Obviously, the Glossary of the parties' interconnection agreement is not the place for GNAPs to continue its argument with the FCC on the nature of Internet Traffic. GNAPs' changes to "Traffic Factor 2," moreover, only muddy the waters. Changing the term "intrastate" traffic to "other" traffic makes the definition vague and unworkable.

Glossary § 2.95: The definition of "Trunk Side" is set forth in § 2.95 of the Glossary. GNAPs has not explained how Verizon's proposed definition of "Trunk Side" is restrictive, or unwarranted, or even how this definition relates to GNAPs' ability to use two-way trunks. Absent an explanation, Verizon has no basis for addressing GNAPs' concerns, and the Commission lacks a basis for adopting GNAPs' proposed changes.

Interconnection Attachment §§ 2.2.1.1 and 2.2.1.2: GNAPs' changes to these Sections misstate the law. As written by Verizon, § 2.2.1.1 establishes that Interconnection Trunks are to be used for Reciprocal Compensation Traffic, translated LEC IntraLATA toll free service access code

traffic, IntraLATA Toll Traffic (between Verizon and GNAPs' respective customers), Tandem Transit Traffic, and Measured Internet Traffic. GNAPs' language would allow other types of traffic to be carried on Interconnection Trunks *based on whether the carrier of the traffic imposes a charge for the traffic*. Likewise, in Section 2.2.1.2, GNAPs' changes would limit Exchange Access to that traffic for which the carrier charges from "time to time."

The imposition of charges is not the defining criterion for Exchange Access traffic. GNAPs' erroneous edits do not relate to Issue 7 and, therefore, should be rejected.

Interconnection Attachment § 2.2.5: GNAPs' unexplained changes to § 2.2.5 eliminate engineering design requirements that ensure network reliability for the operation of interconnection trunk groups and Verizon's tandem switches with the goal of avoiding premature tandem exhaust. If a tandem exhausts because of excessive NEC traffic, it will compromise Verizon's ability to manage its network, to the detriment of Verizon's retail and wholesale customers.

This is a reasonable limitation as evidenced by Verizon's agreement with other carriers in Ohio.[50] Indeed, Verizon's proposed § 2.2.5 also provides the carriers with the flexibility to mutually agree on the limit should the circumstances warrant it. GNAPs' edits, however, would allow it to circumvent Verizon's engineering practices and confuses Verizon's traffic routing and engineering practices with GNAPs' ability to select two-way trunks.

Interconnection Attachment § 2.3: GNAPs also made extensive changes to § 2.3, Verizon's one-way trunking provisions, even though GNAPs maintains that it would prefer to use two-way interconnection trunks between it and Verizon. As with the deployment of two-way interconnection

trunks, the parties need to mutually agree on the terms and conditions relating to the deployment of one-way trunks. Verizon's proposed §§ 2.2.3 and 2.3 recognize this operational reality.

GNAPs' edits to one-way trunk ordering responsibilities would appear to be inconsistent with its changes to the two-way trunking section and inconsistent with how Verizon currently handles one-way trunking with NECs in Ohio. GNAPs also struck § 2.3.1.3.1, which deals with disconnecting underutilized trunks. As addressed above, GNAPs' elimination of this section would provide GNAPs a more expensive form of interconnection with grades of service better than what Verizon provides itself and other NECs. Moreover, GNAPs has completely struck, without explanation, all the terms and conditions for one-way trunks in §§ 2.3.2 *et seq.* as they relate to Verizon when it deploys a one-way trunk group to GNAPs. This wholesale deletion creates ambiguity and uncertainty between the parties.

Interconnection Attachment § 2.4.4: By striking Verizon's proposed § 2.4.4 and inserting additional language, GNAPs refuses to provide Verizon with forecasts of traffic originating on Verizon's network and terminating on GNAPs' network to enable Verizon to effectively manage its network. Judging from the changes made to Verizon's proposed § 2.4.4 of its interconnection attachment, it appears that GNAPs wants to use trunk forecasts as a means to reserve facilities without paying for those facilities through firm service orders. In other jurisdictions, GNAPs provides Verizon with a forecast of its inbound and outbound traffic in accordance with Verizon's proposed § 2.4.4. GNAPs' edits would also require Verizon to provide GNAPs a forecast, which is contrary to the agreements GNAPs and Verizon have in other jurisdictions.

[50] Verizon has reached this agreement with several carriers in Ohio including, SBC Telecom, Inc., Budget Phone, Inc., and IG2 Inc., among other carriers.

Verizon uses trunk forecasts from NECs to assist Verizon in determining the timing and sizing of switch capacity additions. The customer information known only by GNAPs, by far, has the greatest impact on the need for interconnection trunks that are required to carry calls from Verizon's network to GNAPs' network. For instance, if GNAPs targets customers who primarily receive calls, like ISPs, and GNAPs knows that most of those calls will originate from Verizon's network, then only GNAPs can forecast the timing and magnitude of traffic that originates on Verizon's network. Obviously, GNAPs is in a better position to forecast its own growth. In order for Verizon to do a more effective job in managing its network, Verizon needs good faith, non-binding traffic forecasts from NECs, including GNAPs.[51]

Interconnection Attachment §§ 2.4.8, 2.4.9, 2.4.13, 2.4.14: GNAPs' changes in these sections would collectively and individually hold Verizon to unreasonably stringent trunking operational responsibilities and parameters. The modifications GNAPs makes to §§ 2.4.8 would require Verizon to provide GNAPs with a better grade of service than what Verizon provides to itself or to other NECs.

In addition, because GNAPs, and not Verizon, is primarily responsible for engineering the two-way trunk groups between the parties, it would be unfair to hold Verizon accountable for performance

[51] *See Petitions of MediaOne Telecommunications of Massachusetts, Inc. and New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for Arbitration, Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement and Petition of Greater Media Telephone, Inc. for Arbitration, Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts*, Massachusetts Department of Telecommunications and Energy, D.T.E. 99-42/43, 99-52 at 88-89 (August 25, 1999) (holding that MediaOne should forecast interconnection-related products by wire center because this information is useful in deciding what additional facilities Bell Atlantic may need to engineer); *see also In re AT&T Communications of Midwest, Inc., Final Arbitration Decision on Remand*, 1998 WL 316248 *10, Iowa Utilities Board (rel. May 15, 1998) (holding that when U.S. West Communications is responsible for transport network planning, the CLECs should provide trunk forecast information to U.S. West because it is in all the carriers' and customers' best interests).

measures and penalties for blocking on trunk groups over which GNAPs has primary engineering responsibility.

In § 2.4.14, GNAPs' proposed edits would require Verizon to withdraw two-way traffic and install one-way interconnection trunks for GNAPs in thirty days. Verizon cannot possibly complete all the work necessary to make this conversion in thirty days. As with GNAPs' other proposed edits, it offers no reason why it should be accorded special treatment.

Interconnection Attachment § 2.4.11: GNAPs' edits to Verizon's proposed § 2.4.11 are inappropriate and nonsensical. GNAPs has inserted the terms "originating party" and "terminating party" in this provision. As an initial matter, inserting these terms into the two-way trunking section makes no sense. On a two-way trunk, both parties originate and terminate traffic. Thus, in § 2.4.11, as proposed by GNAPs, both parties would submit access service requests ("ASRs") on one another for the same trunk group. These changes create uncertainty and are vague. They are also inconsistent with GNAPs' redline modifications to §§ 2.4.2 and 2.4.10 -- in these sections GNAPs is the only party that would submit ASRs.

Interconnection Attachment § 2.4.12: GNAPs has eliminated a provision that would enable Verizon to disconnect underutilized trunks that are operating under 60% utilization. Underutilized trunk groups inefficiently tie up capacity in Verizon's network. Verizon, however, will not disconnect an entire trunk group. By not permitting Verizon to disconnect some trunks from underutilized trunk groups, GNAPs would have a more expensive form of interconnection with a better grade of service than Verizon provides to itself and other NECs.

If Verizon is unable to disconnect underutilized trunks, it cannot use these trunks to meet the needs of other carriers and customers. Without the right to disconnect excess trunk groups when they

are significantly underutilized, Verizon will not be able to manage its network in an efficient manner. If surplus trunks are left in service for one carrier, this could have a negative impact on the quality of service provided by Verizon to all other carriers with whom it interconnects. Disconnecting underutilized trunk groups enables Verizon to maintain the integrity of its network for every carriers' and customers' benefit.

Interconnection Attachment § 2.4.16: The recurring and non-recurring charges that Verizon seeks to recover from GNAPs in § 2.4.16 fairly compensate Verizon for its costs while ensuring that GNAPs pays no more than its fair share of those costs. For recurring charges, Verizon proposes that the parties calculate a proportionate percentage of use, or PPU. The PPU is a billing factor, it calculates the total number of minutes each party sends over a facility on which a two-way interconnection trunk rides. Based on the PPU, GNAPs will pay Verizon a monthly recurring charge equal to the percentage of use for that facility. For example, assume that GNAPs issues an ASR to Verizon to install a two-way trunk between the parties. Further assume that Verizon incurs $1,000 in monthly recurring costs to maintain the facility on Verizon's side of the GNAPs' IP -- the financial demarcation point -- and that 95% of the traffic over this trunk, or the PPU, is originated by Verizon to GNAPs. In accordance with § 2.4.16, Verizon would assess GNAPs $50 in monthly recurring charges because the PPU indicates that GNAPs only uses 5% of the two-way interconnection trunk it has ordered from Verizon.

For the non-recurring portion of § 2.4.16, Verizon proposes that when GNAPs orders a two-way trunk from Verizon, it pays for half of Verizon's non-recurring charges. Because GNAPs orders the two-way trunk from Verizon and Verizon must then install this trunk, Verizon supplies the service and incurs non-recurring costs for the work it performs on behalf of GNAPs. Nevertheless, Verizon

only charges GNAPs half of its non-recurring costs because Verizon not only supplies the service, the two-way trunk and its installation, but Verizon uses the two-way trunk too. These non-recurring charges merely compensate work for Verizon that it would otherwise not have to recover but for the order placed by GNAPs for the two-way trunk.

Suppl. Issue 12: Should Verizon Be Permitted To Collocate At GNAPs' Facilities In Order To Interconnect With GNAPs?[52]

GNAPs' Position: No. GNAPs is not required to provide Verizon with collocation at GNAPs' facilities.

Verizon Position:

Verizon proposed contract language would give it the option to collocate at GNAPs' facilities. GNAPs' changes to § 2.1.5, however, indicate that it will only offer collocation "subject to GNAPs' sole discretion and only to the extent required by Applicable law."[53]

Verizon's proposal provides, in essence, that GNAPs (or any other NEC interconnecting with Verizon) has a choice – if it will not allow Verizon to collocate at its facilities, it should be prohibited from charging Verizon distance-sensitive transport rates to get Verizon's traffic to those facilities. Verizon recognizes that § 251(c)(6) of the Act applies specifically to ILECs. Nothing in the Act, however, prohibits the Commission from allowing Verizon to interconnect with the NECs via a collocation arrangement at their premises. By preventing Verizon from doing so, GNAPs would limit Verizon's interconnection choices with GNAPs. Furthermore, pursuant to GNAPs' proposals, all of

[52] Verizon Proposed Interconnection Agreement, Interconnection Attachment §§ 2.1.5 *et seq*.

[53] GNAPs proposed interconnection agreement, interconnection attachment § 2.1.5.1. GNAPs' modifications to § 2.1.5 of the Interconnection Attachment are inconsistent with § 2 of the Collocation Attachment, which permits Verizon to collocate at GNAPs' facilities.

the interconnection locations are determined by GNAPs.[54] This gives GNAPs every means available to minimize its own expenses and maximize Verizon's. It is thus reasonable to impose some logical limits on GNAPs' discretion, either through the VGRIP proposal discussed in Issues 1 and 2, or through rules on collocation and distance sensitive transport rates.

Fairness dictates that Verizon have comparable choices to those available to GNAPs. If the GNAPs contract proposals are adopted, however, Verizon would be financially responsible for delivering its originated traffic to distant points within the LATA. Unlike the choices Verizon provides GNAPs, GNAPs would prohibit Verizon from delivering its originated traffic to multiple points on the network by precluding Verizon from collocating at GNAPs' premises. In addition, if Verizon cannot interconnect with GNAPs via a collocation arrangement, Verizon cannot self-provision the transport to the distant GNAPs switch, and then Verizon must purchase distance-sensitive transport from GNAPs (or a third-party that GNAPs does allow to collocate). These arrangements place Verizon at the mercy of GNAPs when Verizon delivers its originating traffic.

[54] *See* GNAPs proposed interconnection agreement, interconnection attachment, §§ 2.1 - 2.1.5.

VI. INTERCARRIER COMPENSATION ISSUES (ISSUES 3 - 5)

Verizon's proposed contract language on the disputed intercarrier compensation issues affords GNAPs the freedom to designate its local calling areas for ***retail*** purposes, but closely tracks the Commission's and FCC's rules for ***intercarrier compensation***. Quite the opposite, and contrary to the Arbitration Panel's decision in the *GNAPs Consolidated Arbitration*, GNAPs' proposals would impact Verizon's local calling areas that are frequently the subject of Commission scrutiny, subvert the FCC's *ISP Remand Order*, blur the well-defined local/toll distinction, and transform a two-party arbitration into a broader policy proceeding. GNAPs advocates the proposition that by its own ***retail*** offerings, it can determine what it should pay to use Verizon's network. GNAPs attempts to accomplish these objectives without fully explaining its position.

Issue 3: Should Verizon's Local Calling Area Boundaries Be Imposed On GNAPs Or May GNAPs Broadly Define Its Own Local Calling Areas?

GNAPs' Position: Verizon's Template Agreement should not constrain GNAPs from defining its own local calling areas, including defining its own local calling area on a LATA-wide basis.

Verizon Position:

A. Although GNAPs May Define Its Own Retail Local Calling Areas, Verizon's Local Calling Areas Govern For Intercarrier Compensation Purposes.

GNAPs' statement of the issue is misleading. Verizon has never tried to impose its local calling areas on GNAPs or any other NEC. Verizon, like this Commission[55] and the recent *GNAPs Consolidated Arbitration*,[56] acknowledges GNAPs' and all carriers' freedom to define their own local calling areas for their own customers. The real issue here is not how GNAPs or Verizon define their local calling areas for their customers. It is, rather, how a local calling area will be defined for purposes of reciprocal compensation. Again, GNAPs is well aware of the real issue from the parties' negotiations and history of arbitrations between Verizon and GNAPs affiliates in other states. The pertinent contract provisions are Glossary § 2.34, 2.47, 2.56, 2.75, 2.83, 2.91, and Interconnection Attachment §§ 6.2 and 7.3.4.

Contrary to GNAPs' suggestions, using Verizon's local calling area as the basis for assessing reciprocal compensation does ***not*** force GNAPs to adopt Verizon's local calling scopes for retail purposes. GNAPs will remain free to establish its own local calling areas for purposes of marketing its services to customers. The Commission, not Verizon, made this decision in its Local Competition

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[55] *In the Matter of Allegiance Telecom of Ohio, Inc.'s Petition for Arbitration of Interconnection Rates, Terms and Conditions, and Related Arrangements with Ameritech Ohio*, Case No. 01-724-TP-ARB, at pg.9.

[56] *GNAPs Consolidated Arbitration* at 11-12.

Finding and Order by "affirm[ing] that NECs shall be permitted to establish their own local calling areas which can arguable vary from the ILECs."[57] Moreover, this Commission clearly decided that a call that terminates in an ILECs local calling area is considered local and reciprocal compensation is due.[58] GNAPs could, for example, define the entire state as a local calling area, even though Verizon's local calling area definition remains the standard for applying reciprocal compensation.

What GNAPs cannot do, however, is circumvent the existing access charge regime through its unilateral definition of "local calling areas." Because access rates are generally higher than reciprocal compensation rates, GNAPs seeks to avoid paying access charges by defining away toll calling. That is, if GNAPs uses the entire state as its local calling area for retail purposes, it contends that the entire state should be the local calling area for reciprocal compensation purposes. If allowed to create such a scheme, GNAPs could avoid payment of Verizon's tariffed access charges and, thus, undermine the support that access charge revenue provides for basic local services prices.

The FCC has, likewise, made clear that "transport and termination of local traffic are different services than access service for long distance communications."[59] GNAPs' proposal is also at odds with § 251(g) of the Act, which maintains the distinction between access services and local interconnection, and more specifically, maintains access services under existing arrangements unless or until those regulations are specifically superceded. It is inappropriate for GNAPs to ask this Commission to abandon the local/toll distinction in the context of this two-party arbitration proceeding.

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[57] *Local Competition Findings and Order* Case No. 95-845-TP-COI at 32. *See also Local Service Guideline* II(D)(2), ("**Local Calling Areas** NECs may establish their own local calling areas.").

[58] *GNAPs Consolidated Arbitration* at 13 (citing *In the Matter of Allegiance Telecom of Ohio, Inc.'s Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Ameritech Ohio* (01-724)).

Until either the FCC or this Commission issues regulations which specifically supplant the existing distinctions between access services and local interconnection, Verizon's Commission approved local calling areas are the only reasonable determinant of each party's reciprocal compensation obligations for the purposes of this interconnection agreement.

Verizon's proposed language is fair, reasonable and most importantly, is consistent with Commission precedent. Accordingly, this Commission should adopt Verizon's proposed contract language for these sections. [60]

B. Contract Changes Proposed By GNAPs But Not Discussed In GNAPs' Petition.

As with previous issues, GNAPs referenced disputed contract sections at the end of its discussion of Issue 3 that are unrelated to the question of which carrier's local calling scope governs for intercarrier compensation purposes. Specifically, GNAPs referred to but failed to explain disputed contract language in Glossary § 2.77 and Interconnection Attachment §§ 2, 7.1, and 13.3. The Commission should reject GNAPs' proposed contract language because (i) GNAPs raised no issue, provided no justification for its proposed language, and failed to explain Verizon's position in contravention of its duty as a Petitioner under § 252(b)(2) of the Act, and (ii) Verizon's proposals are reasonable and consistent with the law.

Glossary Section 2.77 – Routing Point: GNAPs' edits to this section would remove the following sentence in the definition of a Routing Point: "The Routing Point must be located within the

[59] *Local Competition Order* at ¶ 1033.

[60] Verizon proposed interconnection agreement, Glossary §§ 2.34, 2.47, 2.56, 2.75, 2.83, 2.91; Interconnection Attachment §§ 6.2 and 7.3.4.

LATA in which the corresponding NPA NXX is located." The Routing Point must be a POI -- a physical point where Verizon hands off traffic to GNAPs as discussed in connection with Issues 1 and 2. GNAPs must have at least one POI per LATA, and GNAPs may never compel Verizon to route traffic beyond the LATA. Although GNAPs does not explain why it deletes this sentence, GNAPs may be confusing the Routing Point with a GNAPs' switch or it may believe that this section impedes GNAPs' proposed "virtual FX" scenario discussed in connection with Issue 4. Whether the POI, and thus the Routing Point, is a switch or some other type of equipment, and whatever the resolution of Issue 4, Verizon's proposed definition of Routing Point appropriately makes clear that Verizon will not be routing calls to GNAPs beyond the LATA.

Interconnection Attachment § 2: GNAP does not explain how its edits to this section relate to Issue 3. Verizon discusses various subparts of § 2 in which there is disputed contract language in connection with Issues 1, 2, 4, 5, and 7.

Interconnection Attachment § 7.1: GNAP does not explain how its edits to this section relate to Issue 3. Verizon discusses § 7.1 in connection with Issues 1 and 2.

Interconnection Attachment § 13.3: GNAP does not explain how its edits to this section addressing number resources, rate center areas, and routing points relate to Issue 3. GNAPs' edits would upend this provision, making it read, "Unless otherwise required by Commission order, each Party will comply with the Rate Center Areas it has established in its tariffs." This language should be rejected because it is contrary to FCC regulations. The FCC's local number portability guidelines require that companies limit porting of telephone numbers to the same rate center. It is essential that all companies operating in the top 100 Metropolitan Statistical Areas ("MSAs") have identical rate center

boundaries to ensure compliance with the FCC rules. Verizon's proposed language captures these obligations:

> Unless otherwise required by Commission order, the Rate Center Areas will be the same for each Party. During the term of this Agreement, GNAPs shall adopt the Rate Center Area and Rate Center Points that the Commission has approved for Verizon within the LATA and Tandem serving area. GNAPs shall assign whole NPA-NXX codes to each Rate Center Area unless otherwise ordered by the FCC, the Commission or another governmental entity of appropriate jurisdiction, or the LEC industry adopts alternative methods of utilizing NXXs.

For the reasons stated above, GNAPs' changes would eviscerate this regime and should be rejected.

Issue 4: Can GNAPs Assign To Its Customers NXX Codes That Are "Homed" In A Central Office Switch Outside Of The Local Calling Area In Which The Customer Resides?[61]

GNAPs' Position: The primary function of NXX codes is for network traffic routing, not rating, purposes. Accordingly, NXX codes no longer need to be associated with any particular physical customer location and GNAPs should be allowed to assign NXX codes in a manner that fosters competitive choices for customers.

Verizon Position:

A. GNAPs' Use Of NXX Codes Does Not Alter GNAPs' Intercarrier Compensation Obligations.

In a ten-digit local telephone number, the first three digits are the "numbering plan area" or "NPA," commonly called the "area code." The next three digits identify the specific telephone company Exchange Area within the geography covered by the NPA. These digits are referred to as the NXX. When a carrier issues a customer a number with a particular NXX, that carrier is telling all other carriers, for billing purposes, that the customer is located within the particular rate center to which the NXX is assigned in the industry standard documentation, the Local Exchange Routing Guide (LERG).

Rate centers are specific geographic locations used by all carriers for call billing and call routing purposes. There is typically one rate center in each Exchange Area, which is the geographical area served by a single "exchange," or local switching center. Each of Verizon's Exchange Areas has a defined local calling area, which includes the entire Exchange Area and some surrounding territory. Local calling areas are defined in Verizon's tariffs, and determine whether a call is "rated" as local or

[61] Verizon proposed interconnection agreement, Glossary §§ 2.34, 2.47, 2.70, 2.71, 2.72, 2.73, 2.76, 2.77, 2.82; Interconnection Attachment §§ 2.2.1.1, 2.2.1.2, 9.2.1 and 13.3. As with most of the issues in this proceeding, GNAPs makes numerous edits to Verizon's terms included that fall under Arbitration Issue No. 4, without any explanation or discussion. These edited terms and provisions edited by GNAPs should thus be rejected outright.

toll. Each telephone number is associated with a particular rate center, based on the number's combination of the area code and the NXX code.

A customer's telephone number thus facilitates two separate but related functions: proper call routing and proper call rating. Each NXX within an NPA is assigned to ***both a switch and a rate center***. As a result, telephone numbers provide the network with specific information (*i.e.*, the called party's end office switch) necessary to route calls correctly to their intended destinations. Telephone numbers also identify the exchanges of both the originating caller and the called party necessary for the proper rating of calls. It is this latter function of assigned NXX codes – the proper rating of calls – that is at the heart of the virtual NXX issue.

Verizon opposes virtual NXX assignments and payment of reciprocal compensation for these non-local calls, but not because it is attempting to "thwart" the development of new telephone services for Ohio consumers. Rather than serving the public, GNAPs has two more self-serving goals in mind: (1) to require Verizon, contrary to law, to pay reciprocal compensation to GNAPs for calls that do not originate and terminate in the same Verizon local calling area and thereby constitute exchange access service, and (2) to deprive Verizon of access charges that it is otherwise entitled to receive for such toll calls.

What GNAPs wants to do here is to assign NXX codes to its customers that do not correspond to the rate centers in which those customers' premises are physically located. For example, GNAPs would like to give a customer a telephone number with an NPA-NXX code that is assigned to the Baltimore, Ohio rate center, even though the customer is not located in Baltimore, but rather Columbus, Ohio. As a result, when a Verizon customer in Baltimore calls the GNAPs customer physically located in Columbus, it looks like a local Baltimore call to both Verizon and its customer in

Baltimore, even though the call is being placed between different local calling areas. GNAPs' virtual NXX proposal would obliterate the longstanding local/toll distinction that guides telephone service pricing policy. ILECs' tariffs and billing systems use the NXX codes of the calling and called parties to ascertain the originating and terminating exchanges involved in a call, and the call is rated accordingly. A customer's basic exchange rate typically includes the ability to make an unlimited number of calls within a designated geographic area at modest or no additional charge. Calls outside the local calling area (as defined in Verizon's tariffs and local interconnection agreements) are subject to an additional toll charge. Toll service is generally priced higher, on a usage-sensitive basis, than local calling. As regulators across the country, including this Commission, understand, toll revenues have historically been used to hold down the price of basic local service.[62] However, if NXX codes can be assigned to customers outside their home rate center, then the ILEC cannot discern whether the call is local or toll, and cannot properly rate it. Potentially, all calls will look like local calls – *even if they are classified as toll for billing purposes in the ILECs' tariffs.* This means that ILECs will lose the toll revenues that are a principal source of contribution to local rates.

Verizon itself has no way of tracking virtual NXX calls on a call-by-call basis. Likewise, Verizon has no ability to "look behind" GNAPs' system for assigning NXX codes and no ability to determine where a particular call has actually terminated physically. If Verizon cannot make this determination, then there is no way of verifying whether a particular call for which GNAPs is seeking reciprocal compensation is *actually* a local call made between callers in the same local calling area.

[62] In lieu of a toll charge to the customer initiating the call, ILECs can be reimbursed for their handling of the long-distance call through arrangements such as toll-free 1-800/877/888 or through foreign exchange (FX) service. In no instance, however, does Verizon offer to transport traffic outside of the

(continued . . .)

Indeed, GNAPs' own description of its proposed virtual NXX service – which it intends to "span regions" – practically guarantees that most if not all of such calls will *not* be local.[63]

GNAPs asserts that reciprocal compensation rather than access charges applies to the hypothetical call discussed earlier thereby making Verizon's inability to "look behind" its system irrelevant. While GNAPs would clearly benefit financially from this sort of arrangement, Verizon is harmed not just by having to make improper reciprocal compensation payments, but by being denied access charges that properly apply to toll traffic. Under GNAPs proposal Verizon would be forced to carry calls across rate centers without compensation from either GNAPs or the party placing the call, even if that party is a Verizon customer. Verizon, like the Arbitration Panel's decision in the *GNAPs Consolidated Arbitration* is "concerned [sic] that the widespread use of virtual NXX codes may not be entirely consistent with the FCC's rules regarding location, number portability, and number assignment."[64] In fact, Verizon is convinced that GNAPs' virtual NXX proposal will result in GNAPs' unilateral cancellation of Verizon's state toll tariffs.

Stated another way, what GNAPs essentially seeks to achieve is a massive rate center consolidation, with potentially *the entire nation* as a *local* calling area. Verizon has no problem with the NECs (or the ILECs) defining their own calling areas as they see fit. However, as noted above, GNAPs' proposal would force Verizon to redefine its local calling areas. The local/toll calling concept

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local calling area without additional compensation for the long-distance handling. Doing so would undermine the infrastructure that has been established to help maintain affordable local service.

[63] *See* GNAPs' Petition at 20 ¶ 48.

[64] *GNAPs Consolidated Arbitration* at 14.

that is linked to Verizon's rate centers, and that is embodied in its tariffs and interconnection agreements, will be rendered meaningless.

GNAPs' proposal clearly flies in the face of this Commission's unmistakable position on this issue: "As NECs establish operations within individual ILEC service area, the perimeters of ILEC local calling area, as revised to reflect EAS, ***shall*** constitute the demarcation for the differentiating local and toll call types for the purpose of traffic termination compensation."[65] There is no more poignant exemplar of this conflict than this Commission's agreement with Ameritech's position that "it should not have to provide free interexchange transport and switching on behalf of AT&T's local customers utilizing such [virtual NXX] services."[66]

Verizon's opposition to this scheme is consistent with Section 251(g) of the Act, and the FCC's *Local Competition Order*. The *Local Competition Order* implements the Act. In it, the FCC asserted that "transport and termination of local traffic are different services than access service for long distance communications."[67] GNAPs' proposal selfishly seeks to eliminate the existing access regime for interexchange calls and to manipulate local interconnection into a windfall for GNAPs.

Furthermore, the reciprocal compensation provisions in Verizon's proposed interconnection agreement are intended to track the FCC's regulations implementing the reciprocal compensation

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[65] *Local Service Guideline* IV(C). *See also Local Competition Finding and Order* at pgs. 35 and 38.

[66] 00-1188 TP-ARB at 43. *See also* 01-724, (". . .Commission should adhere to its decision in 01-724, in which the Commission ruled that reciprocal compensation does not apply to such [virtual NXX] calls.") Virtual NXX calls that cross Verizon local calling area perimeters are therefore toll calls not subject to reciprocal compensation. Additionally, the Commission's Local Competition Findings and Order directs "[f]or transport and termination of toll traffic ILECs shall use their current intrastate exchange tariffs, for compensation of toll traffic. . ."

[67] *See Local Competition Order* at ¶ 1033.

requirements in § 251(b)(5).[68] Those regulations, incontrovertibly defined local traffic based on the physical originating and ending points of a call. For example, in the FCC's *Local Competition Order*, the FCC made clear that the *physical* originating and terminating points of the call determine whether reciprocal compensation charges apply, stating, "Traffic originating and terminating outside of the applicable local area would be subject to interstate and intrastate access charges."[69]

Like this Commission, the Florida Commission recently confirmed that virtual NXX or "VFX" traffic is not subject to reciprocal compensation because it does not physically terminate in the same local calling area in which it originates.[70] While the Florida Commission ruled that NECs may assign telephone numbers to end users physically outside the rate center to which a telephone number is homed,[71] it agreed with its Staff's conclusion that compensation for traffic depends on the end points of the call – that is, where it physically originates and terminates – not on "the NPA/NXXs assigned to the calling and called parties."[72] The Florida Commission adopted its Staff conclusion that "calls to virtual NXX customers located outside of the local calling area to which the NPA/NXX is assigned ***are not local calls for purposes of reciprocal compensation***."[73] The application of this Commission's Local Service Guideline IV.C requires the same conclusion.[74]

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[68] Even with its improper edits to Verizon's proposed definition of "Reciprocal Compensation," GNAPs concedes this to be the case.

[69] *See Local Competition Order* at ¶ 1035.

[70] *See* Staff Memorandum, Investigation into Appropriate Methods to Compensate Carriers for Exchange Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996, Docket No. 000075-TP ("Reciprocal Compensation recommendation"), at 68, 71 (Nov. 21, 2001), approved at Agenda Conference (Dec. 5, 2001).

[71] *Id.* at 90-96.

[72] *Id.* at 88-89; Agenda Conference Approval (Dec. 5, 2001), Issue 15.

[73] Reciprocal Compensation Recommendation at 94.

[74] *Local Service Guideline* IV.C states:

(continued . . .)

The decision in the *GNAPs Consolidated Arbitration* is consistent with the overwhelming majority of state commissions that have considered the issue and also held that reciprocal compensation does not apply to virtual NXX traffic because it does not physically originate and terminate in the same local calling area. These state commissions include California,[75] Illinois,[76] Texas,[77] South Carolina,[78] Tennessee,[79] Georgia,[80] Maine,[81] and Missouri.[82] The Georgia and South Carolina Commissions,

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Local and Toll Traffic Determination

As NECs establish operations within individual ILEC service areas, the perimeter of ILEC local calling areas, as revised to reflect EAS [extended area service], shall constitute the demarcation for differentiating local and toll call types for the purpose of traffic termination compensation. Any end-user call originating and terminating within the boundary of such local calling area, regardless of the LEC at the originating or terminating end shall be treated a local call.

[75] *See Re Level 3 Communications, LLC Petition for Arbitration Pursuant to Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, for Rates, Terms and Conditions with Pacific Bell Telephone Company*, Cal. PUC Docket No. D.00-10-032 at 5.

[76] *TDS Metrocom, Inc., Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Illinois Bell Telephone Co. d/b/a Ameritech-Illinois Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Arbitration Decision, Docket No. 01-0338 at 48 (Ill. Comm. Comm'n Aug. 8, 2001); *Level 3 Communications, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Illinois Bell Telephone Company d/b/a Ameritech Illinois*, Arbitration Decision, Docket No. 00-0332 (Ill. Comm. Comm'n Aug. 30, 2001) ("FX traffic does not originate and terminate in the same local rate center and therefore, as a matter of law, cannot be subject to reciprocal compensation.").

[77] *Proceeding to Examine Reciprocal Compensation Pursuant to Section 252 of the Federal Telecommunications Act of 1996*, Revised Arbitration Award, Docket No. 21982 at 18 (Tex. P.U.C. Aug. 31, 2000) (finding FX-type traffic "not eligible for reciprocal compensation" to the extent it does not terminate within a mandatory local calling scope).

[78] *In re Petition of Adelphia Business Solutions of South Carolina, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended by the Telecommunications Act of 1996*, Order on Arbitration, Docket No. 2000-516-C, at 7 (S.C. P.S.C. Jan. 16, 2001) ("Applying the FCC's rules to the factual situation in the record before this Commission regarding this issue of virtual NXX, this Commission concludes that reciprocal compensation is not due to calls placed to virtual NXX numbers as the calls do not terminate within the same local calling area in which the call originated.") ("Adelphia Arbitration Order").

[79] *In re Petition for Arbitration of the Interconnection Agreement Between BellSouth Telecommunications, Inc. and Intermedia Communications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Tennessee PSC Docket No. 99-00948, at 42-44 (June 25, 2001) "BellSouth/Intermedia Arbitration Order").

[80] *Generic Proceeding of Point of Interconnection and Virtual FX Issues*, Final Order, Docket No. 13542-U, at 10-12 (GA P.S.C. July 23, 2001) ("The Commission finds that reciprocal compensation is not due for Virtual FX traffic.") ("Georgia Generic Proceeding").

likewise, concluded that access charges, rather than reciprocal compensation, should apply to virtual NXX traffic.[83]

GNAPs' claim that Verizon "does not accept symmetry" between the virtual NXX scenario and the FX scenario (in which Verizon allegedly offers the same type of service that GNAPs claims it wants to offer) is ill-founded.[84] While the two services are similar, there are fundamental differences. When Verizon offers FX service, the customer agrees to pay a monthly charge to Verizon for transporting to the customer calls that would otherwise be toll calls and for which Verizon would normally bill the originating party. When NECs provide virtual NXX service, however, the ILEC handling the virtual NXX traffic is not compensated for its transport of calls to a rate center which is outside the normal local calling scope. This Arbitration Panel acknowledged the differences between traditional FX and virtual NXX services saying "there appears to be on important difference between. . .[the two]. . . virtual NXX allows on NXX to be used across multiple rate centers, while the numbers assigned to traditional FX service are unique to that rate center."[85]

Additionally, unlike real FX service, virtual NXX does not use lines dedicated to a customer for transporting the call between rate centers. Instead, it tricks Verizon's switches and billing systems into

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[81] Public Utility Commission Investigation into Use of Central Offices Codes (NXXs) by New England Fiber Communications, LLC d/b/a/ Brooks Fiber Docket No. 98-758, Order Requiring Reclamation of NXX Codes and Special ISP Rates by ILECs, and Order Disapproving Proposed Service (June 30, 2000) (finding VFX an interexchange service, not a local exchange service).

[82] *Application of AT&T Communications of the Southwest, Inc., TCG St. Louis, Inc., and TCG Kansas City, Inc., for Compulsory Arbitration of Unresolved Issues With Southwestern Bell Telephone Company Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Arbitration Order, Case No. TO-2001-455, at page 31 (Mo. P.S.C. June 7, 2001) (finding VFX traffic "not classified as a local call").

[83] BellSouth/Intermedia Arbitration Order at 44; Georgia Generic Proceeding at 11; Adelphia Arbitration Order at 13.

[84] *See* GNAPs Petition at 21-23.

[85] *GNAPs Consolidated Arbitration* at 13.

treating the call as local, rather than toll. In addition, for FX service, the end user customer compensates Verizon for the ability to receive calls from only *one* other rate center. If a customer chose to have FX service from all of the rate centers within a LATA, the total monthly FX charges would be correspondingly much greater (in order to compensate Verizon for transporting the traffic outside of the local calling area from across the LATA). GNAPs is proposing that Verizon provide, in effect, LATA-wide FX service at no charge and that, in addition, Verizon should pay GNAPs reciprocal compensation for these new "local" calls. The Commission should not sanction this patently unfair result.

With this issue, GNAPs asks the Commission to sanction its practice of misassigning NXX codes to customers who are not associated with the exchange to which a code is homed. Additionally, although it is not apparent from the issue as framed, GNAPs wants the Commission to treat virtual NXX calls as local for purposes of reciprocal compensation.[86] The Commission should not approve GNAPs' efforts in this regard, at least not without ordering GNAPs to pay the access charges that properly apply to virtual NXX calls as the Arbitration Panel did in the *GNAPs Consolidated Arbitration*.

[86] *See* GNAPs Petition at 20-21.

B. Contract Changes Proposed By GNAPs But Not Discussed In GNAPs' Petition.

As with previous issues, GNAPs referenced disputed contract sections at the end of its discussion of Issue 4 that are unrelated to the open "policy" issues GNAPs articulates as Issue 4. Specifically, GNAPs referred to but failed to explain disputed contract language in Glossary §§ 2.71, 2.72, 2.73, and 2.77 and Interconnection Attachment §§ 9.2.1 and 13.3. The Commission should reject GNAPs' proposed contract language because (i) GNAPs raised no issue, provided no justification for its proposed language, and failed to explain Verizon's position in contravention of its duty as a Petitioner under § 252(b)(2) of the Act, and (ii) Verizon's proposals are reasonable and consistent with the law.

Glossary § 2.71 – Rate Center Area: GNAPs' edits would remove from this section the following sentence: "The Rate Center Area is the exclusive geographic area that the LEC has identified as the area within which it will provide Telephone Exchange Services bearing the particular NPA NXX designation associated with the Specific Rate Center Area." GNAPs' edit appears to be based upon the incorrect assumption that the term "LEC" in the parties' interconnection agreement means "Verizon" only. That is not correct. The term LEC (which is an undisputed term contained in Verizon's Glossary § 2.49) includes all local exchange carriers, not just incumbents, consistent with the Act's definition. Indeed, Glossary § 2.49 specifically provides that the term "[s]hall have the meaning set forth in the Act." As a result, the geographic area associated with a Rate Center Area or Exchange Area is not defined exclusively by Verizon. For purposes of the parties' interconnection agreement, it is necessary to use the word "exclusive" in order to clarify geographic areas identified by Verizon and Verizon alone

(as opposed to geographic areas that may have been defined by other LECs as well). GNAPs' edits accordingly should be rejected.

Glossary § 2.72 – Rate Center Point: GNAPs' edits to this section would replace the terms "Telephone Exchange Service" and "Toll Traffic," both defined elsewhere in the agreement, with the broader term "Telecommunications Service." There simply is no need for this change, because the calls being measured for purposes of this definition are Telephone Exchange Service and Toll Traffic. "Telecommunications Service" is also defined elsewhere in the agreement as well as in the Act itself. GNAPs' edits, however, would serve no purpose and would confuse an otherwise clear definition. They should be rejected.

Glossary § 2.73 -- Rate Demarcation Point: GNAPs' proposal to delete a tariff reference in this section is discussed in connection with Issue 8. GNAPs' proposal to insert the term "End-User" in front of "Customer" is simply not necessary.

Glossary § 2.77 -- Routing Point: Although related to neither Issue 3 or 4, GNAPs' proposed edits to this section are discussed in connection with Issue 3.

Interconnection Attachment § 9.2.1:[87] GNAPs' edits to this section would have it read: "If GNAPs chooses to subtend a Verizon access Tandem, GNAPs shall designate the NPA/NXX to be served via that Tandem." Because IXCs typically route traffic using the rate center assigned to the NPA/NXX code, GNAPs' proposed language would result in misrouted and uncompleted terminating long-distance (access) calls. Verizon's proposal avoids this problem by requiring GNAPs to assign the

[87] GNAPs never even mentions, much less explains, the changes it proposes to Interconnection Attachment §§ 9.2.3 and 9.2.4. Once again, Verizon's proposal should be adopted because of GNAPs' failure and because Verizon's proposal with respect to transmission and routing of exchange access traffic is reasonable and consistent with industry practice.

same LERG identified NPA/NXX as Verizon when it subtends a Verizon Access Tandem. The Commission should reject GNAPs' edits in favor of Verizon's more practical and workable language.

Interconnection Attachment § 13.3: Although related to neither Issue 3 or 4, GNAPs' proposed edits to this section are discussed in connection with Issue 3.

Issue 5: Is it Reasonable For The Parties To Include Language In The Agreement That Expressly Requires The Parties To Renegotiate Reciprocal Compensation Obligations If Current Law Is Overturned Or Otherwise Revised?[88]

GNAPs' Position: Yes. There is continuing uncertainty surrounding the question of whether ISP-bound calls are local traffic, subject to reciprocal compensation under 47 U.S.C. § 251(b)(5). Because the FCC's most recent ruling on this issue is currently being challenged before federal appellate courts, there is good reason to include specific language in the Agreement obligating both Parties to renegotiate these issues if current law changes.

Verizon Position:

As the Commission is well aware, the FCC's *ISP Remand Order* governs the parties' intercarrier compensation relationship. Even though the United States Court of Appeals for the District of Columbia remanded the *ISP Remand Order* back to the FCC, the court refused to vacate or modify the *ISP Remand Order*.[89] By "simply remand[ing] the case to the Commission for further proceedings,"[90] ***all*** of the regulations relating to intercarrier compensation, specifically reciprocal compensation, remain intact. Accordingly, the intercarrier compensation rules established by the *ISP Remand Order* continue to apply with equal force.[91]

As with all legal authority governing the parties' interconnection agreement, the *ISP Remand Order* may be subject to future changes. Both Verizon and GNAPs have anticipated these possible

[88] Verizon proposed interconnection agreement, General Terms and Conditions §§ 4.5, 4.6; Glossary §§ 2.42, 2.56, 2.74, 2.75, 2.91, 2.93, 2.94; Interconnection Attachment §§ 6.1.1, 6.2, 7.2, 7.3.2.1, 7.4; Additional Services Attachment § 5.1. As with most of the issues in this proceeding, GNAPs makes numerous edits to Verizon's terms included in the wake of the *ISP Remand Order*, without any explanation or discussion. The terms and provisions edited by GNAPs should be rejected for the reasons stated herein.

[89] *See WorldCom, Inc. v. Federal Communications Comm'n*, Case No. 01-1218 (D.C. Cir. May 3, 2002).

[90] *Id*. at 9.

changes and have proposed identical "change of law" language.[92] This standard language will squarely address any future reversal of or modification to the *ISP Remand Order*, as well as any other legal authority.

GNAPs, however, claims it wants to carve out the *ISP Remand Order* from the parties' identical "change of law" language for special treatment. Despite this claim, the only pertinent contract language GNAPs proposes is in Glossary § 2.75, where GNAPs merely inserts the phrase "unless Applicable Law determines that any of this traffic is local in nature and subject to Reciprocal Compensation." This is not "specific language in the Agreement obligating both Parties to renegotiate these issues if current law changes," as GNAPs claims it wants. In fact, GNAPs proposes no such language. Even if it did, there is no need for the specific carve-out that GNAPs proposes in light of the agreed change of law provision.

The bulk of the contract language that GNAPs cites in connection with this issue is really GNAPs' proposal to avoid the terms of the *ISP Remand Order* or prematurely negotiate what the new reciprocal compensation terms should be *if* the *ISP Remand Order* no longer applied. Accordingly, the bulk of GNAPs' proposed language cited with this Issue is unrelated to the stated issue and unnecessary in light of the agreed change of law provision.

A. The *ISP Remand Order* Should Not Be Carved Out From All Other Authorities Potentially Subject To A Future Change In Law.

As an initial matter, GNAPs makes no effort to explain why Verizon's standard "change of law" language (that GNAPs itself has proposed) is inadequate for purposes of revising the parties'

[91] *See id*. at 3, 9.

interconnection agreement in the event the *ISP Remand Order* is someday reversed or otherwise modified. Sections 4.5 and 4.6 of the interconnection agreement explicitly obligate the parties to "revisit" the issue of compensation for Internet-bound traffic under those circumstances and to adopt new language forthwith:

> 4.5 If any provision of this Agreement shall be invalid or unenforceable under Applicable Law, such invalidity or unenforceability shall not invalidate or render unenforceable any other provision of this Agreement, and this Agreement shall be construed as if it did not contain such invalid or unenforceable provision; provided, that if the invalid or unenforceable provision is a material provision of this Agreement, or the invalidity or unenforceability materially affects the rights or obligations of a Party hereunder or the ability of a Party to perform any material provision of this Agreement, ***the Parties shall promptly negotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.***
>
> 4.6 If any legislative, regulatory, judicial or other governmental decision, order, determination or action, ***or any change in Applicable Law***, materially affects any material provision of this Agreement, the rights or obligations of a party hereunder, or the ability of a Party to perform any material provision of this Agreement, ***the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.***[93]

GNAPs has provided no legitimate reason to carve out the *ISP Remand Order* from all other applicable law and to repeat what §§ 4.5 and 4.6 already say.[94] Indeed, injecting superfluous language is undesirable in drafting any contract.

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[92] *See* Verizon's proposed interconnection agreement at §§ 4.5, 4.6; GNAPs' proposed interconnection agreement at §§ 4.5, 4.6.

[93] *See* GNAPs' proposed interconnection agreement at §§ 4.5, 4.6 (emphasis added).

[94] While GNAPs is correct that several parties have appealed the *ISP Remand Order* to the D.C. Circuit, the D.C. Circuit **refused** to stay that Order. *See In re Core Communications, Inc.*, 2001 WL 799957 (D.C. Cir. June 14, 2001).

Distinguishing the *ISP Remand Order* from other controlling authority potentially subject to reversal or modification would set a confusing precedent that could lead to problems reconciling two separate provisions. For example, NECs not familiar with the negotiations in this proceeding might contend that if §§ 4.5 and 4.6 were intended to cover all changes in law, then it would not have been necessary to single out the *ISP Remand Order* in the first place. Verizon would be forced to litigate the question of the breadth of §§ 4.5 and 4.6 every time a NEC disagreed with a new FCC, Commission, or judicial ruling. Verizon should be permitted to rely upon its right to import changes of law without having to initiate repeated proceedings to reaffirm this right.

Verizon recognizes that the *GNAPs Consolidated Arbitration* adopted GNAPs' specific change in law provision for the *ISP Remand Order*.[95] In the context of this arbitration between GNAPs and Verizon, however, GNAPs has not explained what contract section is meant to address the specific change in law provision for the *ISP Remand Order* that GNAPs seeks in its interconnection agreement with Verizon. The extensive edits that GNAPs proposes under the guise of a specific change in law provision for the *ISP Remand Order* go beyond GNAPs' narrowly stated issue. In fact, GNAPs' unexplained edits actually disregard the *ISP Remand Order*.

B. The Commission Should Adopt Verizon's Proposed Language Pertaining To Compensation For Internet-Bound Traffic.

As with other issues, GNAPs referenced contract sections in which there is disputed language, but which cannot be resolved by merely resolving the open "policy" issue articulated by GNAPs in Issue 5. The Commission should reject GNAPs' proposed contract language because (i) GNAPs raised no

[95] *See GNAPs Consolidated Arbitration* at 15 (the Arbitration Panel's recommendation only applied to Sprint because GNAPs and Ameritech settled that issue).

issue, provided no justification for its proposed language, and failed to explain Verizon's position in contravention of its duty as a Petitioner under § 252(b)(2) of the Act, and (ii) Verizon's proposals are reasonable and consistent with the law.

First, GNAPs is not entitled to intercarrier compensation from Verizon for Internet traffic in Ohio. An essential element of the *ISP Remand Order*'s prescribed intercarrier rate regime is the volume cap established at ¶ 78 of the *ISP Remand Order*. There, the FCC mandated that future intercarrier compensation is limited by the amount of Internet-bound traffic exchanged during the first quarter of 2001.[96] Because Verizon and GNAPs did not exchange any Internet traffic in Ohio at all during that period, the parties are on a "bill and keep" basis for all Internet-bound traffic for all periods subject to this interconnection agreement.[97] Nevertheless, it is important to include the intercarrier compensation and related definitions in the interconnection agreement in order to clarify what constitutes reciprocal compensation and what does not under the FCC's regime. Second, for these reasons and for the reasons stated more fully below, the Commission should reject GNAPs' unexplained, erroneous edits and should order the parties to adopt Verizon's language.

[96] *See ISP Remand Order* at ¶ 78.

[97] *See ISP Remand Order* at ¶ 81 ("Finally, a different rule applies in the case where carriers are not exchanging traffic pursuant to an interconnection agreement prior to the adoption of this Order (where, for example, a new carrier enters the market or an existing carrier expands into a market it previously has not served)").

Verizon's proposed terms pertaining to compensation for Internet-bound traffic are completely consistent with the *ISP Remand Order*. As this Commission knows, it has no authority to depart from the FCC's intercarrier compensation rate regime.[98] A full understanding of Verizon's position in this area is necessary in order to put Verizon's proposed terms into context.

The *ISP Remand Order* again confirmed that Internet-bound traffic is not subject to the reciprocal compensation requirements of § 251(b)(5). As the FCC explained, it has "long held" that enhanced service provider traffic – which includes traffic bound for Internet Service Providers ("ISPs") – is interstate access traffic.[99] The FCC further held that "the service provided by LECs to deliver traffic to an ISP constitutes, at a minimum, 'information access' under section 251(g)."[100] Consequently, these services are excluded from the scope of the reciprocal compensation requirements of § 251(b)(5).[101]

The *ISP Remand Order* also sets forth the presumption that traffic from one carrier to another that exceeds a 3:1 ratio is Internet-bound traffic.[102] The FCC's interim rate regime will apply to this traffic. The determination of whether the 3:1 ratio has been exceeded rests upon a consideration of all traffic (except Toll Traffic) exchanged between the Parties pursuant to the agreement.[103]

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[98] *See ISP Remand Order* at ¶¶ 39, 52.

[99] *Id.* at ¶ 28.

[100] *Id*. at ¶ 30. *See also, id*. at ¶ 44.

[101] *Id*. at ¶ 34 ("We conclude that a reasonable reading of the statute is that Congress intended to exclude the traffic listed in subsection (g) from the reciprocal compensation requirements of subsection (b)(5)").

[102] *Id.*

[103] *Id.* at ¶ 79.

Verizon's contract language correctly embodies these principles. Specifically, Verizon has addressed the new regime in its proposed definitions of "Reciprocal Compensation" (Glossary § 2.74) and "Reciprocal Compensation Traffic" (Glossary § 2.75), as well as in §§ 6 and 7 of the Interconnection Attachment, clarifying what traffic types qualify for reciprocal compensation and which do not.

Verizon's closely related definitions of both "Reciprocal Compensation" and "Reciprocal Compensation Traffic" embody the *ISP Remand Order*'s intercarrier compensation obligations as they relate to Internet-bound traffic. Not only did the *ISP Remand Order* prescribe a mandatory intercarrier compensation rate regime with regard to the treatment of Internet-bound traffic but it also, consistent with its statutory interpretation, amended the definition of traffic that is subject to reciprocal compensation under § 251(b)(5) of the Act.[104] Indeed, the FCC no longer utilizes the term "local" to identify traffic that is subject to reciprocal compensation. Rather, the *ISP Remand Order* makes clear that, among other things, reciprocal compensation never applies to "information access" traffic (such as Internet-bound traffic) that falls under Section 251(g) of the Act.[105] In short, in order to be eligible for reciprocal compensation, traffic now must meet two requirements. It must be:

(1) "Telecommunications traffic," which is defined as:

> Telecommunications traffic exchanged between a LEC and a telecommunications carrier other than a CMRS provider, except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access (see, FCC 01-131, paras. 34, 36, 39, 42-43) . . . *See* 47 C.F.R. § 51.701(b)(1).

and

[104] *See* 42 C.F.R. § 51.701(e).

[105] *See ISP Remand Order* at ¶¶ 32 and 34.

(2) the traffic must originates on the network of one carrier and terminate on the network of the other carrier.[106]

In view of this plain language, Verizon has proposed a definition of "Reciprocal Compensation Traffic" that is consistent with the FCC's ruling and captures these two key requirements for eligibility for reciprocal compensation:

> Telecommunications traffic originated by a Customer of one Party on that Party's network and terminated to a Customer of the other Party on that other Party's network, except for Telecommunications traffic that is interstate or intrastate Exchange Access, information access, or exchange services for Exchange Access or information access. The determination of whether Telecommunications traffic is Exchange Access or information access shall be based upon Verizon's local calling areas as defined by Verizon. Reciprocal Compensation Traffic does not include: (1) any Internet Traffic; (2) traffic that does not originate and terminate within the same Verizon local calling area as defined by Verizon; (3) Toll Traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis; (4) Optional Extended Local Calling Scope Arrangement Traffic; (5) special access, private line, Frame Relay, ATM, or any other traffic that is not switched by the terminating Party; (6) Tandem Transit Traffic; or, (7) Voice Information Service Traffic (as defined in Section 5 of the Additional Services Attachment). For the purposes of this definition, a Verizon local calling area includes a Verizon non-optional Extended Local Calling Scope Arrangement, but does not include a Verizon optional Extended Local Calling Scope Arrangement.

Verizon's definitions of "Reciprocal Compensation" and "Reciprocal Compensation Traffic" are necessary to clarify what traffic is subject to reciprocal compensation and what traffic is not. Verizon's definition of "Measured Internet Traffic" in Glossary § 2.56, likewise, identifies traffic that is subject to the interim compensation regime adopted by the FCC. (This definition is reflected in Verizon's Interconnection Attachment, §§ 6 and 7, as well as in the definitions of "FCC Internet Order" (Glossary § 2.36) (left undisturbed by GNAPs); "Internet Traffic"(Glossary § 2.42); "Toll Traffic" (Glossary §

[106] *See* 47 CFR § 51.701(e).

2.91); "Traffic Factor 1" (formerly "Percent Interstate Usage") (Glossary § 2.93), and "Traffic Factor 2" (formerly "Percent Local Usage") (Glossary § 2.94)).[107] GNAPs has not offered any reason why the FCC's regime should not be so reflected.

GNAPs' edits create the following problems in specific contract sections:

Glossary § 2.74 – Reciprocal Compensation: GNAPs' proposed definition of "Reciprocal Compensation," which refers simply to § 251(b)(5) of the Act, is too limited in the wake of the *ISP Remand Order*. At a minimum, it is necessary to specify that reciprocal compensation provides for the recovery of costs incurred for the transport and termination of "Reciprocal Compensation Traffic," as defined. Verizon's proposed terms accomplish this end and should be adopted.

Glossary § 2.75 – Reciprocal Compensation Traffic: The primary problem with GNAPs' proposed revisions here is its insistence upon using the local calling area of the originating party to determine whether a call constitutes "Reciprocal Compensation Traffic." For example, GNAPS proposes to determine whether traffic is exchange access or information access based on the local calling area of the carrier originating the call. Under this proposal, calls between the same end users would be classified as access or reciprocal compensation traffic depending upon who originated the call.

[107] The Commission also should adopt the following Verizon-proposed terms, which GNAPs has inexplicably and inappropriately attempted to alter: Glossary, §§ 2.45 ("IP"), and 2.91 ("Toll Traffic"); Additional Services Attachment, § 5.1 ("Voice Information Services Traffic"); and Interconnection Attachment, §§ 2.2.1.1, 3.3, 6.2, and 7.3.2.1. These provisions reflect changes to terminology that would be necessitated by the adoption of Verizon's proposed definitions and terms addressed above and/or changes necessitated by conforming the terms of this agreement to the reciprocal compensation regime established by the FCC.

This is not only unworkable but also contrary to the FCC's intent for state commissions to use a uniform, historically defined local calling area for purposes of applying reciprocal compensation.[108]

For example, Baltimore, Ohio and Columbus, Ohio are not in the same Verizon tariffed local calling area. Both cities, however, could be in the same GNAPs local calling area. Under GNAPs' proposal, then, when a Verizon Baltimore subscriber calls a GNAPs Columbus subscriber, Verizon would be required to pay GNAPs access charges to terminate this intraLATA toll call (based on Verizon's definition of the local calling area). However, when a GNAPs customer in Columbus calls a Verizon customer in Baltimore, GNAPs would avoid paying Verizon access charges and instead would pay only the lower reciprocal compensation rate (based on GNAPs' geographically broader definition of the local calling area). Thus, for identical calls between Baltimore and Columbus, GNAPs would collect a higher rate for calls from Verizon customers, but pay a lower rate for calls by GNAPs customers. The inequity of GNAPs' proposal is obvious.

As noted with regard to Arbitration Issue 4 and GNAPs' virtual NXX service, arbitrage opportunities arise in the absence of a uniform geographical area for determining whether a call in either

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[108] The FCC has determined that state commissions have the authority to determine what geographic areas should be considered "local areas" for the purpose of applying reciprocal compensation obligations under Section 251(b)(5), *"consistent with the state commissions' historical practice of defining local service areas for wireline LECs*." *See In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, FCC Docket Nos. 96-98, 95-185, First Report and Order (Aug. 8, 1996) at ¶¶ 1033-1035 (emphasis added). The FCC then stated, "Traffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges." *Id.* at ¶ 1035. Thus, the FCC necessarily intended to provide that the geographical areas for two service providers under which traffic is considered to be 252(b)(5) traffic should be consistent.

direction constitutes "Reciprocal Compensation Traffic." As such, Verizon proposes that its own mandatory local calling areas constitute this border.[109] This does not prevent GNAPs or Verizon from providing their respective customers larger local calling areas, but fairly defines the parameters for reciprocal compensation. Verizon accordingly incorporates by reference all of its prior arguments with regard to Arbitration Issue 4. For all of those reasons, the Commission should reject GNAPs' changes.

GNAPs also changes the description of "Toll Traffic" within the "Reciprocal Compensation Traffic" definition by deleting a reference to calls originated on a 1+ presubscription basis or on a casual-dialed (10XXX/101XXXX) basis. This change is inappropriate because it is the "1+" dialing which primarily distinguishes toll from non-toll traffic.

In addition, GNAPs adds the phrase "unless Applicable Law determines that any of this traffic is local in nature and subject to Reciprocal Compensation" in what appears to be an attempt to again circumvent the "change in law" provisions set forth in §§ 4.5 and 4.6 of the General Terms and Conditions. This language is inappropriate for all of the reasons identified above.

Glossary § 2.56 – Measured Internet Traffic: GNAPs' proposed edits to this definition present the same problems as its edits to the definition of "Reciprocal Compensation Traffic." For example, GNAPs deletes references to and descriptions of the Verizon local calling areas that set the boundaries for determining the nature of traffic, and deletes references to calls originated on a 1+ presubscription basis and casual-dialed calls. Verizon accordingly incorporates its prior arguments by reference.

[109] GNAPS also proposes to delete Verizon's definition of a Verizon local calling area in the definition of "Reciprocal Compensation Traffic" as it applies to Extended Local Calling Areas. Such a definition is necessary to ensure that the local calling areas setting the boundaries for determining what constitutes reciprocal compensation traffic are clear. GNAPs' proposed deletion accordingly should be rejected.

Glossary § 2.42 – Internet Traffic: GNAPs' objective in excluding CMRS traffic from the "Internet Traffic" definition is unclear. Equally unclear is what GNAPs intends by adding the phrase "between the parties" in defining what constitutes "Internet Traffic." These changes make no sense. Without further satisfactory explanation, and an opportunity for Verizon to respond, the Commission should adopt Verizon's definition *in toto*.

Glossary § 2.91 – Toll Traffic: GNAPs' definition, as proposed, is too limited. The term "Toll Traffic" is used in the interconnection agreement with reference to traffic that is exchanged between the parties. Thus, GNAPs' pointing to the definition of "telephone toll service" as contained in 47 U.S.C. § 153(48) is insufficient. In addition, the imposition of a toll charge by the party providing the service does not, in itself, define a toll call, or determine whether a toll call is intra- or inter-LATA, as GNAPs states. Moreover, GNAPs' focus on the toll charge in its definition of "Toll Traffic" creates the same problems of a mismatch between reciprocal compensation and access traffic that was discussed above in the context of "Reciprocal Compensation Traffic." GNAPs' definition should thus be rejected.

With respect to the Interconnection Attachment, Verizon's proposed §§ 6 and 7 implement the requirements of the *ISP Remand Order*; namely, to define the boundary between (a) traffic that is subject to reciprocal compensation and (b) other traffic, such as Internet-bound traffic, that is not. GNAPs has modified certain components of §§ 6 and 7 of the Interconnection Attachment without explanation in ways that are particularly troubling:

Interconnection Attachment § 6: In this § 6.1.1, GNAPs continues its assault on the *ISP Remand Order* by deleting some, but not all, references to Measured Internet Traffic and the *ISP Remand Order* in the billing description of the types of traffic and application of the appropriate traffic rate. GNAPs also conditions the rate application only to those minutes where calling party number

("CPN") is passed, without providing any terms for what rate application should apply to minutes where CPN is not passed. Neither the FCC's *Local Competition Order* nor the *ISP Remand Order* included such limitations. In addition, in § 6.2, GNAPs proposes changes that would effectively determine the nature of the call by the originating carriers' local calling areas – a flawed approach that the Commission should reject for the all the reasons outlined above.

GNAPs' proposed changes to § 6.2 would also prohibit the receiving carrier from using CPN to classify traffic delivered by the other party for the purposes of determining the applicable traffic rate, and instead would leave such classification to the originating carrier, which has a financial incentive to classify all of its originating traffic to the lowest rate category. Obviously, use of CPN to classify traffic is more efficient and accurate than simply relying on the originating party to provide the classification.

GNAPs compounds these concerns by deleting in § 6.3 the right of either party to audit the traffic to determine whether the traffic classification is correct. As is discussed in more detail later, it is imperative that each party have the ability to audit the traffic of the other to determine whether the appropriate traffic rates are being applied to accurate traffic levels.

Interconnection Attachment § 7: GNAPs makes a number of inappropriate and unexplained edits in § 7 of the Interconnection Attachment. For example, GNAPs proposes to delete the qualifier "[e]xcept as expressly specified in this Agreement" from the statement in Section 7.2 that no additional charges shall apply for the termination from the IP to the Customer of Reciprocal Compensation Traffic delivered to the Verizon-IP by GNAPs or the GNAPs-IP by Verizon. GNAPs' unexplained objection to this qualifying language is unclear given that the language does not add anything to that which is already "expressly specified in this Agreement." Moreover, there may, in fact, be other applicable

charges. For example, in some instances a billing platform recovery charge is billed to recover the costs associated with recording the usage on two way trunks.

In § 7.3.3., moreover, GNAPs deletes the reference to calls originated on a 1+ presubscription or casual dialed call in the same inappropriate way as it did in the Glossary definition of Toll Traffic. In § 7.3.4, GNAPs also incorrectly proposes to delete Verizon's explanation as to the type of its local calling areas which should govern whether a call constitutes reciprocal compensation traffic, in the same inappropriate manner as it does in the Glossary.

Finally, in § 7.4, GNAPs also would delete the requirement for symmetrical reciprocal compensation rates between the parties in § 7.4. By proposing to delete this section, GNAPs is seeking the ability to charge Verizon more for reciprocal compensation than Verizon charges GNAPs. This proposal contravenes the FCC's requirement for symmetrical reciprocal compensation between carriers as described in 47 C.F.R. § 51.711. GNAPs has not explained why it warrants any exception to this general rule (e.g., GNAPs has not submitted a cost study to the Commission under § 51.711(b)). Accordingly, its position should be rejected.

Additional Service Attachment § 5.1: GNAPs' edits to this Section are erroneous. First, and contrary to GNAPs' suggestion, voice information services (which are provided by third party service/content providers) are not limited to those where providers assess a fee, whether or not the fee appears on the calling party's telephone bill. Indeed, since Verizon may not bill for such services, many providers typically charge the calling party's credit card bill when assessing charges. Some providers do not even do that, opting to recoup their expenses instead through the sale of advertising (often 900 type services). GNAPs' edits, therefore, do not reflect industry practice in this area.

Second, for the purposes of this local interconnection agreement, voice information service traffic necessarily must be intraLATA (rather than exchange access) traffic. GNAPs' edits do not recognize this plain fact.

Third, and despite GNAPs' edits to the contrary, Voice Information Service Traffic is, like Internet traffic, information access traffic that is not subject to reciprocal compensation. On the contrary, both Verizon and GNAPs recoup their costs via arrangements with the third party service/content provider.

Verizon's proposed contract language for all of the above-discussed sections would effectively implement the *ISP Remand Order* and should be adopted.

VII. GENERAL TERMS AND CONDITIONS ISSUES (ISSUES 8, 10-11, SUPPLEMENTAL ISSUES 13-14)

The language Verizon proposes for the disputed general terms and conditions issues is reasonable and consistent with the industry norm. GNAPs' proposed language, on the other hand, attempts to shift GNAPs' risk of doing business in the competitive local marketplace to Verizon. From attempting to exploit arbitrage opportunities regarding Verizon's tariff filings to shielding its books from review by independent third-parties to carrying woefully inadequate insurance, GNAPs' proposals would force Verizon to incur unnecessary expenses and expose itself to unnecessary risks. As such, the Commission should reject GNAPs' positions.

Issue 8: Is It Appropriate To Incorporate By Reference Other Documents, Including Tariffs, Into The Agreement Instead Of Fully Setting Out Those Provisions In The Agreement?

GNAPs' Position: The four corners of the Agreement control any term or provision that affects the dealings of the Parties. Otherwise, Verizon may unilaterally amend the terms and conditions of the Agreement.

Verizon Position:

GNAPs has proposed to delete every tariff reference in the interconnection agreement.[110] Apparently, GNAPs does not object to references to tariffs as a source of prices,[111] but argues that Verizon's proposal will allow Verizon "the ability to unilaterally amend the ***terms*** and conditions of agreement."[112] Verizon's proposal to incorporate applicable tariffs by reference is consistent with this Commission's *Local Service Guidelines* which allows Verizon to either negotiate, arbitrate or offer through a tariff the terms and conditions of competitive local services. The *Local Service Guidelines* also require Verizon to make available to all NECs the terms in a negotiated agreement just as tariff terms are generally available.[113] Verizon's proposal facilitates efficiency, complies with Commission guidelines, and ensures non-discriminatory treatment of NECs thereby fostering a "level

[110] *See* GNAPs' Petition at 28 (Issue 8): "*See e.g.,* Appendix B, Interconnection Agreement, GT&C Section 1; Interconnection Attachment, Sections 1, 8, 9, 10.6; Network Elements Attachment, Sections 1.1, 1.3, 4.3, 4.4.6, 6.2 *and throughout the contract, and the Pricing Attachment.*" (emphasis added).

[111] *See* GNAPs' Petition at 26 (Issue 8): "For this reason, Global requests that the Commission allow Verizon to cross reference solely for the purpose of utilizing its tariffed rates for UNEs or collocation." *See also,* § 9.3 of the Pricing Attachment, which is an undisputed provision referencing tariffs as the source of charges for a service provided under the agreement.

[112] GNAPs' Petition at 26 (Issue 8) (emphasis added).

[113] *Local Services Guidelines* VI(D)(2)(b) ("A LEC may prepare and file with the Commission a tariff, . . . containing the terms and conditions for carrier-to-carrier services, features, and functionalities that such company generally offers in the state. In addition to the tariff, any negotiated terms and conditions between carriers, approved by the Commission, *must* be available on a nondiscriminatory basis to any certified carrier. . .") (emphasis added).

playing field" to all LECs in the Ohio competitive local exchange service market.[114] GNAPs' objection is based on a misunderstanding of Verizon's proposed agreement and the tariff process.

A. GNAPs Misconstrues Verizon's Proposal.

GNAPs proposed language is an attempt to create a circumstance which would "freeze" any current tariff prices, preventing any amendment or changes to tariff prices from becoming effective. Accepting GNAPs' proposal would produce and environment in which GNAPs chooses the more favorable of the Interconnection Agreement or Tariff terms, conditions and rates. Such a result is not only an arbitrage it is contrary to this Commission's clearly articulated goals. Additionally, GNAPs' proposed language is designed to leave open the opportunity for GNAPs to offer more favorable terms and conditions in its tariff than it offers Verizon in this interconnection agreement thereby allowing it to discriminate against Verizon relative to the terms offered to other carriers in the market. However, it is this Commission's policy to apply *Local Service Guidelines* equally to all LECs, ILEC and NEC alike.[115] Accordingly, this Commission's guideline requiring negotiated and tariff terms to be generally available is applicable to GNAPs. GNAPs cannot, through this agreement, change the Commission's policy. This Commission's *Local Service Guideline* requiring LECs to make both interconnection agreement and tariff terms generally available is undoubtedly intended to preclude the unfair advantage GNAPs seeks to secure for itself.

[114] There are currently no effective Verizon tariffs in Ohio. Several tariffs are currently pending before this Commission. Verizon's proposal seeks to preserve its ability to choose tariffs to establish services where it determines that a tariff is the most efficient and efficacious means to determine the terms, conditions and rates that will be generally available and applicable to all participants in Ohio's local exchange service market.

[115] *Local Service Guideline* II(A)(f)(3)(a)("Except as indicated in these guidelines, requirements placed on the ILECs . . . will apply to the NECs unless modified through an appropriate regulatory proceeding.")

Verizon's proposal, to establish effective tariffs as the first source for applicable prices, ensures that its prices are set and updated in a manner that is efficient, consistent, fair, and non-discriminatory for all NECs. Verizon's proposed contract provisions justifiably eliminate the arbitrage that would result from GNAPs' proposal locking Verizon into contract rates, but leaving GNAPs free to purchase from future tariffs should the tariff rates prove more favorable. As the New York Public Service Commission recently concluded in rejecting arguments similar to those GNAPs makes here, "as a general matter the tariff provisions provide a reasonable basis for establishing a commercial relationship . . . we will conform the new agreement to Verizon's tariff where it is possible to do so."[116]

GNAPs' proposal raises the additional problem of potentially mooting the tariff process. Each carrier that opts into GNAPs' agreement would be given the same right to veto Verizon's tariffed rates by electing the interconnection agreement's rates. Even if GNAPs, or other carriers, participate in the Commission's review of Verizon's tariff filing, they could avoid the result by continuing to claim the benefit of frozen interconnection agreement rates.

If Verizon's tariff rates are allowed to go into effect pursuant to applicable law, then they should be the effective rates for all carriers on a fair and non-discriminatory basis. GNAPs should not be allowed to avoid changes in legally effective rates that it does not like. If a tariff rate is revised during the term of the agreement, Verizon's language ensures that the agreement remains up-to-date without the need for further amendment.

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[116] *Joint Petition of AT&T Communications of New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York Inc.,* Case No. 01-C-0095, Order Resolving Arbitration Issues, at 4 (July 30, 2001).

To the extent that products or services are not covered in a tariff, Verizon's proposed agreement contains a pricing schedule that addresses the recurring and non-recurring rates and charges for interconnection services, UNEs and the avoided cost discount for resale. Contrary to GNAPs' assertion that Verizon's proposal is "open-ended,"[117] Verizon accounts for the appropriate interplay between tariffs and interconnection agreements in a manner that is fair and efficient. The Commission should adopt Verizon's proposed language because it precisely implements its guidance.

B. The Tariff Process Is Not Unilateral.

GNAPs incorrectly claims that the tariff process forecloses GNAPs' opportunity to raise concerns because it is allegedly "unilateral." When Verizon files a proposed tariff with the Commission, GNAPs has the opportunity to protest that tariff.[118] And because Verizon's proposal gives precedence to the terms and conditions of the interconnection agreement, GNAPs need not review the details of every tariff filing for fear that it might contradict the terms and conditions of the interconnection agreement.

C. GNAPs Fails To Support Its Proposed Contract Changes.

GNAPs has broadly challenged the appropriateness of referencing tariffs in the Parties' interconnection agreement. However, GNAPs' Petition fails to specify many of the contract provisions and its rationale does not apply to many of the contract sections where it has deleted tariff references. GNAPs' failure to specifically address each section leaves many proposed contract changes unsupported. For these reasons alone, the Commission should reject GNAPs' proposed changes.

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[117] GNAPs' Petition at 27.

[118] *In the Matter of Phase II of the Commission's Investigation Into the Regulatory Framework for Competitive Telecommunications Services in Ohio*, Case No. 86-1144-TP-COI; *In* (continued . . .)

Below, Verizon describes the specific contract sections in which GNAPs has proposed deletion of a tariff reference:

GENERAL TERMS AND CONDITIONS

§§ 1 (1.1 through 1.3), and 4.7: GNAPs ignores or misapprehends Verizon's proposed § 1.2 in the General Terms and Conditions section, which establishes the Parties' interconnection agreement as the governing document in the face of a conflict between the agreement and a tariff. Under Verizon's proposal, a tariff reference generally may *supplement* the agreement's terms and conditions, but not *alter* it with conflicting terms or conditions. In the event of conflicting terms and conditions, Verizon's proposal gives the interconnection agreement precedence.[119] Thus, the terms and conditions of the interconnection agreement would not be an "ever-moving target," as GNAPs contends.[120]

§§ 6.5, and 6.9: Verizon's reference to tariffs in these sections ensures that its practice of requiring cash deposits or letters of credit is consistent for all carriers and with any practice sanctioned by the Commission.

§ 41.1: Verizon's reference to tariffs in this section ensures that Verizon's practice of collecting taxes from the purchasing party is consistent for all carriers and with any practice sanctioned by the Commission.

§ 47: Verizon's reference to tariffs in this section ensures that GNAPs will enforce applicable restrictions on the use of Verizon's services. For example, if GNAPs purchases a retail

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Matter of the Commission Investigation into the Regulatory Framework for Telecommunication Service in Ohio, Case No. 84-944-TP-COI.

[119] *See, e.g.*, § 1.2 of the General Terms and Conditions section.

telecommunications service for resale, restrictions on that service will only be articulated in Verizon's retail tariff. GNAPs should not evade its responsibility to ensure improper use of retail services by its end users by deleting reference to the only document that would contain them. The general concerns GNAPs discussed in connection with this issue do not apply to the reference in this section.

GLOSSARY

§ 2.73: GNAPs deleted the reference to Verizon's applicable tariffs in § 2.73. Preserving this reference is appropriate because if the Agreement does not describe the point at which the customer becomes responsible for maintaining network facilities, then Verizon could be held liable for damage for which it would not otherwise be responsible.

ADDITIONAL SERVICES ATTACHMENT

§§ 9.1 and 9.2: GNAPs does not specifically address its rationale for deleting references to tariffs in these sections dealing with GNAPs' access to Verizon's poles, ducts, and rights-of-way. Verizon's tariff references in these sections ensure that its practices for granting access to its poles, conduits and rights-of-way are consistent for all carriers and any Commission-sanctioned practices.

INTERCONNECTION ATTACHMENT

§§1, 2.1.3.3, 2.1.4, 2.3, 2.4.1, 8.1, 8.2, 8.4, 8.5.2, 8.5.3, and 16.2 Verizon's references here ensure that the parties interconnect with one another in accordance with their respective tariffs when appropriate. The parties may exchange and/or deliver exchange access traffic and other traffic that is not covered by the parties' interconnection agreement, the reference to the parties' respective tariffs properly indicates that the rates, terms and conditions for this traffic are addressed in their tariffs. For

[120] *See* GNAPs' Petition at 27.

example, Verizon's access services are not included in the Interconnection Agreement so there is a need to refer to that particular tariff as Verizon does in § § 9.2.2, and 10.6. Moreover, deleting reference to tariffs for the very traffic that is excluded from reciprocal compensation pursuant to § 251(b)(5) of the Act, and the associated reciprocal compensation regulations, simply makes no sense and is not justified or explained by GNAPs.

§ 2.1.3.3: Verizon's proposed language makes available entrance facilities to all carriers pursuant to Verizon's applicable access tariff. This ensures consistency for all telecommunications carriers purchasing entrance facilities from Verizon.

§ 2.1.6: GNAPs deleted the reference to its applicable tariffs in § 2.1.6. Maintaining this reference is appropriate because not all of its rates, terms and conditions may be contained in this interconnection agreement.

§ 8.2: Exchange access, information access, exchange services and toll traffic, are all forms of traffic for which compensation is ***not*** governed by the terms of the interconnection agreement. Accordingly, it is appropriate for the Commission to adopt Verizon's proposed reference to its applicable tariff.

§§ 9.2.2, 10.1, and 10.6: GNAPs does not specifically address its rationale for deleting references to Verizon's applicable access tariffs, but striking them is inconsistent with the industry standard and applicable law. For instance, parties to an interconnection agreement refer to their applicable access tariffs in meet point billing arrangements because the "customer" is usually the toll provider not GNAPs or Verizon. In addition, when GNAPs purchases access toll connecting trunks for the transmission and routing of traffic between GNAPs' "local" customer and an IXC, it does so under Verizon's applicable access tariff because it is an access service. The reference to Verizon's access

tariff is consistent with the FCC's *ISP Remand Order,* in which the FCC held that § 251(g) "preserved pre-Act regulatory treatment of all access services."[121] Because Verizon's access toll connecting trunks service is an "exchange service for such access to interexchange carriers," the reference to Verizon's applicable access tariff is appropriate.[122]

RESALE

§§ 1, 2.1, 2.2.4: GNAPs does not specifically address its rationale for deleting tariff references in these sections dealing with resale of Verizon's telecommunications services. Its general objections are inapposite here in light of the fact that it is Verizon's ***retail*** telecommunications services as set forth in Verizon's ***retail*** tariff that are resold. There will be no separate list of retail telecommunications services within the agreement and, thus, the tariffs must be referenced. In addition, as discussed above, Verizon's reference to tariffs in these sections ensures that GNAPs will enforce restrictions on the use of Verizon's services, whether they appear in the agreement or solely in a tariff. The general concerns GNAPs discussed in connection with this issue simply do not apply to the references in this section.

UNBUNDLED NETWORK ELEMENTS

§ 1.1: Even though Verizon does not have a UNE tariff in Ohio if it does implement one, the reference to tariffs in this section ensures that if the parties' agreement does not address the provisioning of a UNE, Verizon's applicable tariff may address the subject.

§ 1.4.1: GNAPs' general objections to tariffs are inapposite here, because in this section, Verizon's tariffs only apply when and if a change in law dictates that Verizon is no longer required to

[121] *ISP Remand Order* ¶ 39.

[122] 47 U.S.C. § 251(g).

provide GNAPs a UNE or UNE combination. Should this event come to pass, and GNAPs would like to receive a similar service, Verizon will provide it in accordance with its tariff.

§ 1.8: The reference to Verizon's tariff in this section ensures that Verizon's premises visit charge is uniform for all customers.

§§ 4.3, 6.1, 6.1.4, 6.1.11, 6.2.1, 6.2.6, and 12.11: Verizon's tariff references are appropriate because not all the rates may be addressed in the pricing attachment to the interconnection agreement. If they are not, Verizon is simply informing GNAPs that the applicable rate may be found in Verizon's tariff.

§ 4.7.2: Verizon's tariff reference here benefits GNAPs. That is, if Verizon's tariff prescribes a shorter collocation augment interval exists in Verizon's tariff, it will comply with the shorter interval instead of the longer one reflected in the contract.

§ 8.1: The language of this section is no longer in dispute pursuant to the parties' settlement of the dark fiber issues in the entirety of Unbundled Network Elements § 8.

COLLOCATION

§ 1: GNAPs' general objection to tariff references is particularly inappropriate because Verizon's rates, terms and conditions for collocation can only be found in the collocation tariff filed by Verizon at the Commission. Provisioning collocation to NECs pursuant to its filed tariff ensures that Verizon provides collocation to all carriers in a non-discriminatory manner.

PRICING ATTACHMENT

§§ 1.5 and 2.2.2: GNAPs already has agreed that charges for a service will be as stated in the applicable tariff. *See* § 9.2 of the Pricing Attachment. Its agreement to this approach in § 9.2 is inconsistent with its proposed deletion in § 10.2.2. Moreover, in § 9.5, it appears that GNAPs proposes to freeze those tariff prices to allow it a choice of the tariff price in effect at the time of the agreement or a subsequent tariff price. As discussed above, GNAPs should not be permitted such a price arbitrage opportunity.

Issue 10: Should the Interconnection Agreement Require GNAPs To Obtain Commercial Liability Insurance Coverage Of $10,000,000 And Require GNAPs To Adopt Specified Policy Forms?

GNAPs' Position: The Agreement may require GNAPs to obtain minimum insurance coverage, but these limits should be far lower than those contained in the current Template Agreement and should allow GNAPs to use an umbrella policy in lieu of more specific categories of insurance to meet Verizon's reasonable insurance requirements.

Verizon Position:

Verizon is required to enter into interconnection agreements with NECs. In light of that requirement, it is reasonable for Verizon to seek protection of its network, personnel, and other assets in the event a NEC has insufficient financial resources.[123] GNAPs' proposed amendments to Verizon's insurance requirements would eliminate certain types of insurance and substantially lower insurance amounts. GNAPs' amendments should be rejected because Verizon's proposed insurance requirements are reasonable in light of the risks for which the insurance is procured and consistent with what Verizon requires of other carriers, as set forth in its tariffs.[124]

The highlights of Verizon's insurance provisions include:

?? A requirement for GNAPs to maintain appropriate insurance and/or bonds during the term of the interconnection agreement. Specifically, the GNAPS is required to maintain at least:

[123] The FCC recognized the reasonableness of an insurance requirement in *In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport, Second report and Order*, rel. June 13, 1997, ¶ ¶ 343-55 ("*Second Report*").

[124] *See In the Matter of the Application of Verizon North Inc. for approval to Introduce a new Local Network Services Tariff, P.U.C.O. No.8, Containing Collocation Services, which will provide Competitive Local Exhange Carriers access to the Company's premises, and eliminate Concurrence in the Section 17 Expanded Interconnection Services of GTOC FCC No. 1 as set forth in Tarriff P.U.C.O. No. 2., Facilities for Intrastate Access Tariff.*, Section 2, Collocation Service, Section 7, Insurance, Original Sheet 29.

1. Commercial general liability : $2,000,000.
2. Commercial motor vehicle liability insurance: $2,000,000.
3. Excess liability insurance (umbrella): $10,000,000.
4. Worker's compensation insurance as required by law and employer's liability insurance: $2,000,000.

- All risk property insurance (full replacement cost) for GNAPS' real and personal property located at a collocation site or on Verizon premises, facilities, equipment or rights-of-way.
- Deductibles, self-insured retentions or loss limits must be disclosed to Verizon.
- GNAPs shall name Verizon as an additional insured.
- GNAPs shall provide proof of insurance and report changes in insurance periodically.
- GNAPs shall require contractors that will have access to Verizon premises or equipment to procure insurance.

Verizon's insurance requirements impose reasonable, necessary and minimal requirements on GNAPs.[125] They are not, as GNAPs argues, a "covert barrier to competition." GNAPs and Verizon operate in a highly volatile industry and in a society in which either party could be held jointly or severally liable for the negligent or wrongful acts of the other. The interconnection agreement that will result from this proceeding gives GNAPs the ability to collocate at a Verizon facility. Collocation particularly increases Verizon's risk and exposure to loss in many ways -- for example: (i) risk of injury to its employees, (ii) possible damage or loss of its facilities and network, (iii) risk of fire or theft, (iv) risk of security breaches, and (v) possible interference with, or failure of, the network.

In § 20 of the General Terms and Conditions section, GNAPs agrees to indemnify Verizon. As a natural extension of the indemnification, Verizon's proposed § 21 requiring insurance provides the

[125] *Second Report* at ¶ 346, 348 ("a LECs' requirement for an interconnector's level of insurance is not unreasonable as long as it does not exceed one standard deviation above the industry average . . .[of] 21.15 million"). The aggregate amount of insurance Verizon seeks from GNAPs fall below this measure of reasonability.

financial guarantee to support the promised indemnifications. Verizon's recent experience with NEC bankruptcies reveals that insurance coverage is often the only source of recovery.

GNAPs' proposed insurance coverage is inadequate. For example, GNAPs proposes that a limit of $1,000,000 on general commercial and excess liability coverage. In today's environment, many individuals have more than $1,000,000 coverage for liabilities associated with their residence and personal automobiles. More importantly, tort judgments, including costs and legal fees, routinely exceed $1,000,000, making GNAPs' proposal woefully insufficient.

Moreover, GNAPs' proposal to impose mutual insurance requirements on Verizon throughout § 21 make no sense. First, Verizon maintains an extensive insurance program that is financially sound. Second, the risks associated with the interconnection agreement run primarily to Verizon. Other problems with GNAPs' proposed edits are highlighted below:

§ 21.1.2 GNAPs' proposal to delete the reference to vehicle insurance entirely is unreasonable. GNAPs should assure that GNAPs' vehicles used in proximity to Verizon's network are adequately insured and that excess coverage is provided for employees operating personal vehicles relating to the performance of the agreement.

§ 21.1.3 Excess liability insurance should be provided with limits of not less than $10,000,000, rather than the $1,000,000 limit GNAPs proposes, for exposures associated with Verizon's property and equipment, activities of GNAPs subcontractors or GNAPs-related activities on Verizon's premises.

§ 21.1.4 An employer's liability limit of $2,000,000, rather than GNAPs' $1,000,000 proposal, is standard in the industry and is particularly important because this is an area of increased claims activity.

§ 21.1.5 GNAPs should provide coverage for any real and personal property located on Verizon's premises. It is standard business practice for any company adequately to insure its property and that of its employees.

§ 21.3 In the insurance industry, when two parties have insurance coverage for the same assets or potential losses, the function of the "additional insured" provision is to ensure that one of the insurance companies takes the lead in providing a defense.

> This will not ultimately determine which parties' insurance policy will provide coverage -- that question is tied to the fact-specific analysis of the event giving rise to a loss and a coverage question -- but it will avoid having two insurance companies point their finger at each other rather than move forward to resolve the underlying claims. The additional insured provision makes clear that one company must assume the notice of claim and defend.

The difference in the parties' respective networks and rights to interconnect demonstrates that the "risk" of the relationship is asymmetrically Verizon's risk. The interconnection agreement that will result from this proceeding, a facilities-based agreement, provides GNAPs the ability to collocate at a Verizon facility. Collocation increases Verizon's risk and exposure to loss in many ways: (i) the risk of injury to its employees, (ii) possible damage or loss of its facilities and network, (iii) the risk of fire or theft, (iv) the risk of security breaches, and (v) possible interference with, or failure of, the network.

An equitable competitive environment does not dictate that both parties be listed as "additional insureds" in the other's policy -- that would defeat the purpose. Moreover, because GNAPs' risk is significantly less than Verizon's, this Commission should eliminate the "additional insured" provision altogether and adopt Verizon's proposed § 21.3

Because Verizon's proposed insurance requirements are reasonable and GNAPs' recommendations are inadequate, the Commission should reject GNAPs' revisions to § 21 of the General Terms and Conditions section.

Issue 11: Should The Interconnection Agreement Include Language That Allows Verizon To Audit GNAPs' "Books, Records, Data And Other Documents?[126]

GNAPs' Position: The Agreement should not include language that allows either Party to audit the other Party's books, records, documents, facilities and systems.

Verizon Position:

GNAPs proposes to completely delete Verizon's proposed audit provisions in § 7 of the General Terms and Conditions section and § 6.3 of the Interconnection Attachment, leaving neither party with the ability to evaluate the accuracy of any bills. Once again, GNAPs' opposition to Verizon's proposed contract provisions is based on a misunderstanding of the proposal.

According to GNAPs, Verizon's proposed audit requirements would force GNAPs "to provide ***Verizon*** access to ***all*** of its 'books, records, documents, facilities and systems.'"[127] Inherent in this statement are three misconceptions. First, Verizon's proposal applies equally to both parties, not just GNAPs. Second, GNAPs would not be providing records to ***Verizon***, but pursuant to § 7.2, the "audit shall be performed by independent certified public accountants" selected and paid by the Auditing Party that are also acceptable to the Audited Party. If GNAPs is concerned about providing competitively sensitive information, it can require a protective agreement or request a protective order, as is customary Commission practice in Ohio.

Third, the auditing ***accountant*** would not have access to ***all*** records, but only to those "necessary to assess the accuracy of the Audited Party's bills."[128] In short, Verizon's audit provisions

[126] Verizon proposed interconnection agreement, General Terms and Conditions §§ 7 *et seq.*; Additional Services Attachment § 8.5.4; Interconnection Attachment § 10.13.

[127] GNAPs' Petition at 30 (emphasis added).

[128] Verizon proposed interconnection agreement, general terms and conditions §§ 7.1,7.3.

are not the "unreasonably broad" mechanism that opens GNAPs' "proprietary business records to Verizon," as GNAPs complains.

The audit provision in § 6.3 of the Interconnection Attachment is similarly limited to a review of "traffic data" to ensure that rates are being applied appropriately.[129] Verizon's proposed § 7.4, which requires the auditing party to bear the expense of the audit, ensures that audits will not be requested without reasonable cause, while § 7.1 limits their frequency. And, Verizon's proposed § 8.5.4 of the Additional Services Attachment and 10.13 of the Interconnection Attachment, likewise, provide reasonably circumscribed audit rights.

As Verizon's proposal makes clear, Verizon does not seek audit rights as a competitor of GNAPs, but as a customer. Without audit rights, Verizon will be forced to accept GNAPs' charges without any way to verify their accuracy or appropriateness. This is unacceptable from a business perspective. The supplier (billing party) reasonably should be expected to carry the burden to justify its charges to the customer (the billed party). This is especially true in the context of auditing traffic data, which is embodied in Verizon's proposed § 6.3 of the Interconnection Attachment.

Moreover, Verizon's proposed § 8.5.4 not only protects Verizon's interest -- to make certain that GNAPs is using OSS in the manner it was intended -- but this provision ensures that all NECs, not just GNAPs, can use Verizon's OSS to place and order or support a customer. Literally hundreds of NECs, CMRS providers, and ICXs rely on access to Verizon's OSS. Section 8.5.4 merely provides Verizon with the right to monitor its OSS so that all carriers alike receive uninterrupted access to this system. In addition, customer proprietary network information ("CPNI") resides in Verizon's OSS

database. To ensure that Verizon is meeting its obligations to protect CPNI, which includes the release of this information to authorized parties, Verizon must be able to monitor or audit GNAPs' use of Verizon's OSS. By monitoring or auditing a carrier's use of Verizon's OSS, Verizon can maintain the system integrity of its OSS for the nondiscriminatory benefit of all users.[130]

GNAPs claims that the "terms of the proposed Template Agreement are sufficiently clear and ensure compliance with the Agreement for the purposes of billing and record keeping purposes"[131] and points to "the right to pursue good faith negotiations in the first instance, and failing that [Verizon] may seek legal or equitable relief in the appropriate federal or state forum."[132] It is plainly unreasonable and bad public policy to expect a carrier to resort to litigation just to verify the appropriateness of a bill.

It is no mystery why GNAPs hopes to deprive Verizon of the audit rights it seeks. Verizon's affiliate uncovered an what it believed to be an illegal billing scheme a GNAPs affiliate implemented to overcharge the Verizon affiliate millions of dollars under the guise of reciprocal compensation. *See* Verizon's Complaint filed in *New York Telephone Company, et al. v. Global NAPs, Inc., et al.,* No. 00 Civ. 2650 (FB) (RL), (E.D. N.Y.). When this history is viewed along with the finding by a California federal court that a GNAPs' principal "acted in bad faith, vexatiously, wantonly and for oppressive reasons"[133] and "perpetrated a fraud on the Court,"[134] GNAPs has no reasonable basis to

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[129] A California Arbitrator recently adopted Verizon's proposal for this section of the contract. *See* California DAR at 87.

[130] *See* 47 U.S.C. § § 222, 251.

[131] GNAPs' Petition at 31.

[132] GNAPs' Petition at 31.

[133] August 31, 1995 Order of the United States District Court for the Central District of California in *CINEF/X, INC. v. Digital Equipment Corporation,* No. CV 94-4443 (SVW (JRx)) at 31.

[134] *Id.* at 31.

assert that Verizon should simply have to trust in its reasonable performance under the interconnection agreement.

Pursuant to *Local Service Guideline* IV(B), "[a]ll carriers shall be required to maintain records of the originating call details, which will be subject to periodic audits for validation of traffic jurisdiction."[135] Although this guideline does not specify an auditor, Verizon's proposal that an independent third-party function as auditor is reasonable. An independent third-party would be uniquely skilled an capable of ensuring compliance with the terms of the Interconnection Agreement while neither jeopardizing the confidentiality of either party nor the delicate competitive balance in the relationship between them.

[135] *See also Local Competition Findings and Order*, at pg 35 ("All LECs and NECs are to measure local and toll traffic if technically and economically feasible. . . Such records are subject to periodic audits for validation of traffic jurisdiction.").

Suppl. Issue 13: Should GNAPs Be Permitted To Avoid The Effectiveness Of Any Unstayed Legislative, Judicial, Regulatory Or Other Governmental Decision, Order, Determination Or Action?[136]

GNAPs' Position: Yes. Even if a legislative, judicial, regulatory or other governmental decision, order, determination, or action has not been stayed, GNAPs believes the agreement should allow the parties to avoid implementation until appeals are exhausted.

Verizon Position:

Consistent with Verizon's general approach to make "applicable law" the cornerstone of its proposed interconnection agreement, Verizon's proposed § 4.7 of the General Terms and Conditions section ensures that the contract reflects changes in law. GNAPs proposes edits that would delay implementation of a change of law until appeals are exhausted, even if the change of law is not subject to a stay.[137] This is patently unreasonable. If a change in law is effective, the parties' agreement must recognize it rather than try to predict the result of further proceedings or substitute their judgment for that of a governmental decision-maker who chose not to grant a stay.

In another proposed edit, GNAPs seeks to ensure that any discontinuance of service, payment, or benefit is "in accordance with state and federal regulations and recognizing GNAPs' state and federal obligations as a common carrier."[138] GNAPs' language is superfluous and, thus, undesirable from a contract drafting standpoint. The parties have agreed that "Verizon will provide thirty (30) days prior

[136] Verizon proposed interconnection agreement, General Terms and Conditions § 4.7.

[137] In § 4.7 of the General Terms and Conditions section, GNAPs proposes to add the underlined phrase: "Notwithstanding anything in this Agreement to the contrary, if, as a result of <u>any final and non-appealable</u> legislative, judicial, regulatory or other governmental decision, order, determination or action, or any change in Applicable Law, Verizon is not required by Applicable Law to provide any Service, payment or benefit. . . ."

[138] *See* GNAPs' proposed § 4.7 of the General Terms and Conditions section.

written notice to GNAPs of any such discontinuance of a Service, unless a different notice ***period*** or ***different conditions*** are specified in this Agreement . . . or ***Applicable Law*** for termination of such ***Service in which event such specified period and/or conditions shall apply***."[139]

It is critical to Verizon that it have the right to cease providing a service or benefit if it is no longer required to so under applicable law. In such case, Verizon will comply fully with any legal requirements governing the timing or other procedures relating to discontinuance of the service or benefit. In the *California DAR*, the arbitrator preliminarily held:

> Verizon's language in General Terms and Conditions § 4.7 relating to this issue is adopted. Orders of this Commission and the FCC, as well as court decisions, are effective unless stayed. Any such order or decision which is effective must be incorporated into this ICA. This Commission expects carriers to implement any order issued, as of its effective date. Carriers do not have the option to avoid implementation by waiting for the results of any final appeal.[140]

Verizon's proposed § 4.7 is also consistent with prior arbitration orders of this Commission.[141] Accordingly, the Commission should adopt Verizon's proposed § 4.7.

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[139] § 4.7 of the General Terms and Conditions section (emphasis added).

[140] *California DAR* at 88.

[141] *See In the Matter of AT&T Communications of Ohio, Inc.'s and TCG Ohio's Petition for Arbitration of Interconnection Rates, Terms, and Conditions and Related Arrangements with Ameritech Ohio*, Case No. 00-1188-TP-ARB, Arbitration Award, at 55 (June 21, 2001). The Commission adopted the Panel Recommendation that concluded "'legally binding,' means that the legal ruling has not been stayed, no request for stay is pending, and, if a deadline for requesting a stay is designated by statute or regulation, it has passed.'" *Id*.

Suppl. Issue 14: **Should GNAPs Be Permitted To Insert Itself Into Verizon's Network Management Or Contractually Eviscerate The "Necessary And Impair" Test To Gain Access To Network Elements That Have Not Been Ordered Unbundled?**[142]

GNAPs' Position: Yes. GNAPs appears to want access to all of Verizon's "next generation technology."

Verizon Position:

Section 42, as proposed by Verizon, clearly states that Verizon will provide interconnection and UNEs to the extent required by applicable law. No where in GNAPs' Petition or in its contract proposal does GNAPs define "next generation technology." GNAPs' failure to define the term "next generation technology" in its proposed contract necessarily renders this term vague and should not be included in the Parties' contract. It is unclear whether GNAPs seeks interconnection with a specific network or access to an element.

GNAPs appears to assume that "applicable law" requires "reasonable and non-discriminatory access to ***all*** next generation technology for the purpose of providing telecommunications services." (Emphasis added). With respect to technology upgrades, Verizon recognizes its obligations to provide GNAPs with interconnection to its facilities and access to its unbundled network elements as required by law. Accordingly, § 42 states that Verizon will provide interconnection and UNEs to the extent required by applicable law. However, applicable law only requires reasonable and nondiscriminatory interconnection to Verizon's existing network, not a superior one.[143] In addition, "applicable law" also

[142] Verizon proposed interconnection agreement, General Terms and Conditions § 42.

[143] *See* 47 U.S.C. § 251(c)(2); *Iowa Utilities Bd. v. F.C.C*, 219 F. 3d 744, 758 ("Nothing in the statute requires the ILECs to provide superior quality interconnection to its competitors").

obligates Verizon to provide GNAPs unbundled access to network elements that have been declared UNEs or that pass the necessary and impair test.[144]

Requiring Verizon to grant access to ***all*** of its "next generation technology," whatever that terms means to GNAPs, may be inappropriate because it may not be technically feasible for Verizon to provide such access. The better, and lawful, process is for the Commission or the FCC to consider evidence regarding the new technology under the "necessary and impair" test and then determine the technical feasibility of granting such access. Consequently, Verizon's language accurately reflects its lawful obligations and should be adopted. The Commission should reject GNAPs' overreaching proposal as creating unnecessary ambiguity.

[144] *See Iowa Utilities Bd.*, 219 F. 3d at 757-58.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the attached Response Of Verizon North Inc. To The Petition For Arbitration Of Global NAPs by email and by overnight, express mail on James Scheltema, Director of Regulatory Affairs, Global NAPs Inc., 5042 Durham Road West, Columbia, MD 21044, William J. Rooney, Jr. ,Vice President and General Counsel, Global NAPs, Inc., 89 Access Road, Norwood, MA 02062, John Dodge, Cole, Raywid and Braverman, L.L.P., 1919 Pennsylvania Ave., N.W., 2nd Floor, Washington, D.C. 20006, and by email and U.S. mail on Thomas J. O'Brien, Esq., Bricker & Eckler LLP, 100 South Third Street, Columbus, OH 43215, on this 6th day of May, 2002.

Carolyn S. Flahive